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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 588 (ER)

6 AHMED MOHAMMED EL GAMMAL,

7 Defendant.  
-----x

8 New York, N.Y.  
9 January 23, 2017  
10 9:15 a.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BRENDAN F. QUIGLEY

18 NEGAR TEKEEI

19 ANDREW J. DeFILIPPIS

20 Assistant United States Attorneys

21 FEDERAL DEFENDERS OF NEW YORK, INC.

22 Attorneys for Defendant

23 BY: SABRINA SHROFF

24 ANNALISA MIRÓN

25 DANIEL G. HABIB

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1 (In open court; jury not present)

2 THE COURT: There are a number of items that had been  
3 brought to my attention.

4 First of all, let me ask, I've been told that we would  
5 not be beginning with the videotaped testimony of Mr. Roloff.  
6 Is that because we're not going to be taking his testimony at  
7 all or because we're doing it after Agent Nguyen?

8 MS. MIRON: No, we are not calling Mr. Roloff.

9 THE COURT: Okay. So, let's talk first about this  
10 special agent. First of all, is he here?

11 MS. TEKEEI: Yes, your Honor. He's here.

12 THE COURT: The government has moved pursuant to U.S.  
13 v. Touwe is it to limit his testimony to certain items that had  
14 been specifically identified by the defense. Is there any  
15 objection to the government's request?

16 MS. MIRON: Your Honor, I believe the testimony we  
17 plan to elicit will fall within those four categories for which  
18 we've provided notice.

19 THE COURT: Very well. So that should take care of  
20 that.

21 MS. MIRON: While we are on the topic of the agent,  
22 would I have permission to lead him as an adverse witness?

23 THE COURT: I suppose. Any objection to that?

24 MR. QUIGLEY: No, your Honor.

25 MS. MIRON: Thank you.

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1                   THE COURT: Let's put aside the issue of the jury  
2 instructions for now because they're going to take up more  
3 time.

4                   Let's now talk about the defense request to admit  
5 redacted version of DX 113-BB. Is there an objection to that  
6 from the government?

7                   MR. QUIGLEY: So, yes, on 113-BB, but just to save  
8 time, on 113-A we're fine with that redacting, that partial  
9 that they also objected to, so there is no issue there. The  
10 part that Ahmed was vocal in his --

11                  THE COURT: Okay. So that's coming in, you don't  
12 object to that coming in.

13                  MR. QUIGLEY: No. There are two issues in the defense  
14 letter. One was an objection to 113-A, a portion of 113-A.  
15 Sorry 113-C. We will redact that portion of the exhibit so  
16 that's not an issue.

17                  On 113-BB, Defense I guess 113-BB, we still believe  
18 that there's a couple of issues. I think we still believe  
19 there is hearsay in here, specifically the "here's the résumé"  
20 piece of that. The part where Samy El-Goarany says "I'm trying  
21 to get on track work-wise though," that is a statement that is  
22 coming in for the truth of the matter asserted that he is in  
23 fact trying to get on track work-wise. And "here's new résumé"  
24 is a statement. He's saying here's new résumé. Statement of  
25 fact. So there's that.

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1           There is also the issue that with these redactions, we  
2 think any relevant, relevance of this exhibit had been  
3 substantially diminished. And there's been ample testimony or  
4 there has been testimony in the record that Samy El-Goarany was  
5 doing different things at this time, was exploring different  
6 options, so we think there is also with the redactions a  
7 relevance and 403 issue and this evidence will be cumulative  
8 especially in light of the low probative value.

9           But I think the main objection is it still contains  
10 these statements of fact, which the defense can say they're  
11 going for state of mind, but they're offering it for the truth  
12 of the matter asserted, that "I am trying to get on track  
13 work-wise. You're one of the few who I trust. Here's new  
14 résumé."

15           THE COURT: Okay. Mr. Habib.

16           MR. HABIB: Thank you, your Honor. As detailed in our  
17 submission, each of statements in the exhibits falls squarely  
18 within a settled hearsay exception or is admissible for a  
19 non-hearsay purpose.

20           To respond to the two statements the government has  
21 just identified, statement "I'm trying to get on track  
22 work-wise," is very squarely a statement of either state of  
23 mind or in particular a statement of future intent which is  
24 permissible pursuant to the Second Circuit's decision in,  
25 *Badalamenti* cited in our submission.

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With respect to the statement "here is the résumé," that is a statement which is admissible for the non-hearsay purpose of clarifying El-Goarany's conduct. That is he had sent his interlocutor a file which is his résumé, and the statement "here is the résumé" is admissible for the purpose of clarifying ambiguous conduct. And that's also pursuant to Second Circuit case law cited in our submission.

As to relevance, the statement is highly probative of Mr. El-Goarany's mental state at the crucial time in this prosecution, December 2014, immediately before he's leaving. It's not cumulative because it's testimony that comes or it is evidence that comes from Mr. El-Goarany himself. There has been testimony from other individuals recounting statements about what Mr. El-Goarany may or may not have been intending to do. But these statements, which are from Mr. El-Goarany himself, describing his then existing state of mind and his future intent to seek work in the United States, are highly relevant in that they are probative of a mental state at the time, it's inconsistent with or at least undermines the mental state necessary for the crimes charged.

THE COURT: I disagree that the statements are non-hearsay. He did it with "I'm trying to get on track" it's not necessary, or it could be seen as a statement of future intent, but it could also be seen as a current statement of his current, and "here's new résumé" obviously would only come in

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1 to clarify that statement and therefore that should not come in  
2 either.

3 So what I would allow to come in, if the defense wants  
4 to use it because I don't find it is cumulative and I think it  
5 is arguably relevant, is when Samy says "Salaam alaikum, bro.  
6 Are you able to meet up tomorrow and do you still recommend  
7 going for the MTA job by the way." And then down to I take  
8 it -- you want in la salaam broski?

9 MR. HABIB: Yes, your Honor.

10 THE COURT: "Let's meet at five today. Don't worry.  
11 I'll try to help as much as possible."

12 So if you wish you can put that in and not the  
13 balance. Then the other issue is?

14 MR. QUIGLEY: So I'm clear, basically in the first  
15 message everything after by the way or BTW is out?

16 THE COURT: Yes.

17 MR. QUIGLEY: Okay. Thank you.

18 THE COURT: Okay? What else do we need to do that  
19 does not involve -- oh, does anyone know whether Ms. Manley is  
20 going to be here today?

21 MS. SHROFF: She is, your Honor.

22 THE COURT: Do we have any idea as to when they are  
23 expected?

24 MS. SHROFF: We do, your Honor.

25 THE COURT: When is that?

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1 MS. SHROFF: She should be here by 11, 11:30 or 12. I  
2 think there is some difficulty with the weather, the wind is  
3 not cooperating, but I'm given to understand that she is on her  
4 way.

5 THE COURT: Do we know how they are traveling?

6 MS. SHROFF: Yes, your Honor.

7 THE COURT: How are they traveling?

8 MS. SHROFF: By car.

9 THE COURT: She's bringing Mr --

10 MS. SHROFF: Khalafalla Osman with her. As well as  
11 the second lawyer because there seems to be some dispute about  
12 the attributions made to Mr. Osman, and two lawyers from his  
13 side attended the meetings.

14 THE COURT: So what are we fighting about with respect  
15 to Mr. Osman? Is it expected that he will invoke the Fifth  
16 Amendment with respect to any question he's asked about his  
17 meetings with the FBI and the prosecutors?

18 MS. SHROFF: Your Honor, actually I think that it is a  
19 good question what we're fighting about, and I'm hoping we're  
20 fighting about nothing because in the first instance it is  
21 incumbent upon the government to inform both the defense as  
22 well as Mr. Osman and counsel for Mr. Osman whether or not they  
23 believe he has any exposure.

24 I understand the Department of Justice manual calls  
25 exactly for that. That United States attorney's office is to

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1 inform in open court whether or not they believe the witness,  
2 number one, has exposure; number two, what the exposure is for;  
3 number three, what their responses are going to be to that  
4 exposure.

5 That is my understanding. And I confess, your Honor,  
6 having never been a federal prosecutor, I had to rely on the  
7 expertise of other federal prosecutors who are now members of  
8 the Criminal Justice Act panel. So, with that I turn over to  
9 the government and see if I'm correct in what I have learned  
10 from their prior colleagues.

11 MR. QUIGLEY: Judge, I think I'm not -- we can look at  
12 that provision. I'm not aware of it. Certainly it seems  
13 without knowing what the witness is going to say, it is hard  
14 for us to say whether he has any exposure. But there is,  
15 well -- there is numerous cases that we cite in our brief,  
16 other cases that happened in the District Court, recently I  
17 believe the case before Judge Swain, where Courts precluded  
18 testimony from defense witnesses on the grounds that the  
19 witness had invoked his Fifth Amendment right against  
20 self-incrimination. And an in camera, often after in camera  
21 session with the witness, the Court determined that the witness  
22 had a reasonable fear of being prosecuted.

23 It is not on us to say what Mr. Osman will say or not  
24 say. That's the purpose, that would be the purpose of the  
25 Court discussing with him in camera what his potential exposure

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1 is.

2 THE COURT: Let's go through since we have a little  
3 bit of time, go through what he is expected to say and what the  
4 government's view is. It seems as though he was interviewed at  
5 least twice.

6 Based on my quick review of what was said, and I  
7 haven't had an opportunity to read the 302, but I read  
8 Ms. Manley's summation of what he is expected to say. He made  
9 certain statements about what Samy El-Goarany told him  
10 concerning where he was going and what he would do there,  
11 whether he would come back, whether what he was doing was --  
12 whether Samy believed what he was doing was not militant or not  
13 illegal, and whether he directed him during the meeting to turn  
14 off the phone, etc. And that some of the information that  
15 Mr. Osman provided on the second interview differed at least  
16 slightly.

17 So the question is, to the extent that he made  
18 different statements, I guess an initial question is are they  
19 material such that they would expose him to liability? And if  
20 so, and I don't know whether Ms. Shroff is correct about this,  
21 I don't know that necessarily the government needs to say in  
22 open court, yeah, we will or we won't prosecute him. The  
23 question is whether Mr. Osman has a well-based fear that he  
24 could be subject to prosecution.

25 MS. SHROFF: Your Honor, if I may just to set the

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1 background so to speak. If I may, I'm going to hand up to the  
2 Court all of the 302s just in case you wish to examine them.

3 THE COURT: Okay.

4 MS. SHROFF: I want to point out right off the bat  
5 that Mr. Quigley's citation to the *Stewart* case before Judge  
6 Swain is wholly distinct. Especially because there is clearly,  
7 even under the government's very stringent and narrow view what  
8 was they consider Brady, Brady -- he is literally even in their  
9 opinion a Brady witness.

10 They have spoken to him, and when the government spoke  
11 to him, they did not speak to him much like they spoke to all  
12 the other witnesses. Right. So when they spoke to Khaled  
13 El-Goarany, they didn't have a proffer agreement. When they  
14 spoke to Tarek El-Goarany, they did not have a proffer  
15 agreement. When the government went and spoke to  
16 Mr. Khalafalla Osman the second time, for which we did not have  
17 the 302s until last night at 8:35 p.m., present for that  
18 meeting were two assistant United States attorneys, an FBI  
19 agent, and a proffer agreement.

20 It puts a different slant on what even the government  
21 considers Mr. Khalafalla Osman to be. The information that the  
22 government got from Mr. Khalafalla Osman is of course  
23 memorialized in these 302s. The 302 for the May 6 meeting is  
24 different, the facts in the May 6 302 are different than the  
25 facts in the earlier two 302s.

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1           THE COURT: You said earlier two 302s. Are they 302s  
2 written by different agents concerning the same meeting?

3           MR. QUIGLEY: There are only two 302s.

4           MS. SHROFF: There is one 302, there is one attachment  
5 that accompanies the Brady letter. Here, let me hand it up to  
6 you.

7           THE COURT: I have that one. That's the one you sent  
8 last night.

9           MS. SHROFF: Right. I sent you only the Brady letter.  
10 I did not send you the other two 302s. If the Court at some  
11 point wants them, I have got a copy.

12          THE COURT: You attached a June 8 letter.

13          MS. SHROFF: That was the first Brady disclosure.  
14 Then there is an actual 302 which was dated -- this is a  
15 June 8, 2016 Brady disclosure letter with an attachment. It  
16 has some kind of FBI printout, can't tell who wrote it, but it  
17 had to be either Special Agent Nguyen or Special Agent Collie.

18          The second document is a document dated July 24, 2015,  
19 which is a 302, and it says that the investigation date was  
20 7/22/2015. That was also produced as part of their 3500  
21 production in the second round, not in the first.

22          And then the third document, which is dated May 12,  
23 2016, the most recent of 302s, was produced to us yesterday, at  
24 8:35 p.m. and that's reflects Ms. Tekeei's notes, it appears,  
25 of May 5, 2016.

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1           It is my understanding that Ms. Manley signed on  
2 behalf of Mr. Osman as did Mr. Osman a proffer agreement  
3 pursuant to which they had the May 2016 meeting.

4           Now, here is the thing. After that, and you know,  
5 Ms. Manley can speak to this and it is probably better for her  
6 to speak to this than for me. But as I understand it, the  
7 government invited them to reach out to her pursuant to the  
8 proffer agreement for yet another meeting.

9           THE COURT: What does that mean, "invited her"?

10          MS. SHROFF: Said can you bring your witness in and  
11 come back and we'll have another debriefing pursuant to the  
12 proffer agreement that we had before.

13          So obviously, they consider Mr. Osman in somewhat of a  
14 different category. As I understand it, and this is third  
15 hand, as this trial was unfolding, the government again reached  
16 out to Ms. Manley and informed her that there had been, quote  
17 unquote, significant testimony about Mr. Osman and she should  
18 reach back out to the government.

19          All of the signals that it seems she has received, and  
20 again, I'm speaking third hand so if I'm inaccurate I  
21 apologize. There seems to be some current of this kid may have  
22 exposure.

23          So if that is the current that they're sending out,  
24 and maybe they're not, and this is their opportunity to  
25 clarify, they should -- and I'm not asking them for anything

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1 more than to simply give notice to the record, first of all,  
2 for appeal, that's my primary issue, second of all for  
3 Mr. Osman's sake and Ms. Manley's sake. They should know if  
4 the government doesn't consider him to have exposure, then we  
5 don't have an issue. We're all wasting our time. We can just  
6 put him on the witness stand, do our direct, and move on.

7 It is clear we certainly intend to call Khalafalla  
8 Osman. It's clear they don't want us to call him. Here's the  
9 thing: If he has exposure, please tell us, because I'm not an  
10 assistant United States attorney and I cannot say whether or  
11 not Mr. Osman has exposure.

12 Ms. Miron passes me a note that, of course, in the  
13 Sean Stewart case, the father and the son worked together. The  
14 father was the person to whom Sean Stewart leaked information.  
15 It was clear he had exposure and government said so. I don't  
16 understand, they want us to -- they, meaning the government,  
17 wants this Court to engage in this complicated analysis of  
18 invocation.

19 THE COURT: As I read Ms. Manley's letter, I  
20 understand the exposure that she was concerned about to refer  
21 to perhaps different statements that Mr. Osman gave to the  
22 government first in 2015 and then in 2016. I did not  
23 understand her to be concerned that he had any substantive  
24 involvement in the crimes charged in this case.

25 But, Mr. Quigley, I'll turn to you. What do you think

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1 about all that?

2 MR. QUIGLEY: That's how we understand it too.

3 Ultimately, he knows what he knows. And whether he was  
4 truthful with the government in the interviews, whether he was  
5 not truthful. And that's why the Court we believe should do an  
6 in camera interview with him and certainly not allow him to  
7 invoke the Fifth in front of the jury.

8 Just in terms of -- we have no information that he had  
9 any substantive involvement in this crime. I think that's an  
10 important point, your Honor, in terms of the relevance in this  
11 testimony. This is someone who had no interaction, as far as  
12 we know, with the defendant. This is another witness in the  
13 vein of these are people Samy El-Goarany talked to before going  
14 overseas but who weren't, you know, at all -- Mr. Osman would  
15 say, and you know, he would say I had no idea when he left, I  
16 didn't know he left. That puts him in a very different  
17 category than the defendant.

18 So I think this testimony is in many ways tangential.  
19 But at the end of the day, it is ultimately the witness's --  
20 the issue is whether the witness has a reasonable fear of being  
21 prosecuted. That's the issue for the Court and that's why it  
22 should be taken up in in-camera inspection.

23 THE COURT: I suppose one aspect that I should  
24 consider is whether or not, to the extent that there are any  
25 discrepancies in the statements that he made to the government,

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1 whether such discrepancies are material. Right? Because if  
2 they're not material, arguably they're not actionable and he  
3 can't be prosecuted for them.

4 So, to the extent the government could give me some  
5 direction in that regard, that would be helpful. Obviously, if  
6 I'm Ms. Manley, and again, I haven't analyzed the statements  
7 side by side so closely, but she appears to believe there may  
8 be some discrepancy in what he told the government, and because  
9 of that, one or more of those statements may be material,  
10 particularly early on when the government was I suppose  
11 actively looking for Mr. El-Goarany, and I know what I would do  
12 if I were her. I would instruct him to invoke the Fifth.

13 MR. QUIGLEY: I agree with you, certainly early in the  
14 investigation, when he did make -- without, again, without  
15 knowing what he actually knows, what he believes he may have  
16 been -- Ms. Manley's letter seemed to refer to discrepancies  
17 between the first interview and the second interview. But to  
18 the extent there is other information out there, I think there  
19 is a likelihood it would be material. As you said, especially  
20 early on in the investigation when Mr. El-Goarany was still  
21 alive and when the government was still trying to  
22 potentially -- I won't use "extract" but we held out some hope  
23 he would leave ISIS and potentially come back. So those things  
24 would be material.

25 I would just add to correct one thing. The reason

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1 that we gave him a proffer agreement and didn't give other  
2 witnesses a proffer agreement is because he retained an  
3 attorney who asked for one and we thought --

4 THE COURT: That was my assumption.

5 MR. QUIGLEY: Right.

6 MS. SHROFF: We have witnesses that we take in without  
7 a proffer agreement all the time. That's not neither here nor  
8 there.

9 Let me go back to this witness being tangential. I  
10 want to take a minute and read for the Court, if the government  
11 considers this tangential to the defense, then I shudder to  
12 think whether we're all at the same trial. And I quote from  
13 the 302 that we received last night. "Samy said he was going  
14 to Syria to help with refugees. Samy said parents did not know  
15 about it. Samy acknowledged that he did not speak Arabic.  
16 Samy said he was going to do humanitarian work, Samy told K.O.  
17 he was going to Turkey, said it was not legal, no real  
18 internship, non-violent, humanitarian work."

19 I don't think that's tangential. What is tangential  
20 is whether the government is trying to say that Mr. Khalafalla  
21 Osman's statement to the FBI in response to their request of  
22 whether he turned off a phone, he said to the FBI I pretended  
23 to turn off the phone but I didn't really turn it off.

24 Literally, I think that was in the interview where he  
25 had no lawyer and they showed up to interview him in a

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1 supermarket. I think it was Price Chopper. And they took his  
2 consent I believe either on a napkin, which we've asked the  
3 government to bring to court today, or some kind of paper that  
4 they took from the grocery store as we understand it. So we  
5 would like to see the original.

6 THE COURT: Consent for what?

7 MS. SHROFF: To take snapshots of his chats with Samy  
8 El-Goarany telling Samy El-Goarany, hey buddy, don't contact me  
9 ever again because you're in ISIS.

10 Right. So the false statement that they think that  
11 they want invocation on is whether or not he turned off that  
12 cell phone. A statement which he literally, moments later,  
13 clarified as being untrue in the proffer. Right.

14 And if you compare that conduct to Mr. Tarek  
15 El-Goarany's conduct, for which he walked out of this courtroom  
16 with a non-prosecution agreement, it's really boggles the mind  
17 as to why we're still having this discussion without the  
18 government still being on record whether or not they believe he  
19 has exposure.

20 Since we have time, your Honor, and since the DoJ  
21 manual is available online, and since all three assistant  
22 United States attorneys have cell phones with Internet access,  
23 could we just take two minutes to find out if that is the  
24 proper way to proceed?

25 THE COURT: First of all, I don't know that the United

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1 States attorneys manual necessarily guide what I need to do,  
2 but certainly they can check. And I think that I need to hear  
3 from Ms. Manley as to what she believes her client's exposure  
4 is so we'll leave it there.

5 Do we have a jury?

6 THE DEPUTY CLERK: We do.

7 THE COURT: How long would Mr. Nguyen be on the stand?

8 MS. MIRON: Not very long. 15 minutes for direct.

9 THE COURT: Is there a next witness that you folks  
10 have ready to go?

11 MS. MIRON: Yes, Anna Finkel, our investigator should  
12 be outside.

13 THE COURT: Wonderful. Should we get the jury?

14 MS. SHROFF: Your Honor, could we ask for the Court's  
15 assistance here so we can inspect the original consent form  
16 written by Mr. Osman?

17 THE COURT: Do you have the original?

18 MR. QUIGLEY: Judge, a copy of the original had been  
19 produced to the defense.

20 MS. SHROFF: May we have the original please?

21 THE COURT: Is the original in the courtroom?

22 MR. QUIGLEY: No, it's not.

23 MS. SHROFF: Your Honor, we did make a request for  
24 them to bring the original.

25 MR. QUIGLEY: At 9 o'clock last night.

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1 MS. SHROFF: Right after the 8:35 302.

2 THE COURT: Do we know where the original is? Are we  
3 talking about the original for Mr. Osman, the original consent?

4 MS. SHROFF: Yes, your Honor.

5 THE COURT: Okay. Can I see the copy?

6 MR. QUIGLEY: Yes, your Honor.

7 (Jury present)

8 THE COURT: Ladies and gentlemen, good morning. I  
9 trust you all had a wonderful weekend and that your travels  
10 into the courthouse this morning were not unduly treacherous.

11 Please know that we are keeping tabs on the weather,  
12 and I know there has been some talk perhaps of closing the  
13 courthouse down early.

14 Don't worry, what we are interested in most is making  
15 sure that we disrupt your lives as little as possible and we  
16 get you home and back safe. So we are keeping tabs on that.

17 With that, we will now continue with the defense case,  
18 and Ms. Miron, please call your next witness.

19 (Continued on next page)

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Nguyen - direct

1 MS. MIRON: Thank you, your Honor. The defense calls  
2 Special Agent Le Nguyen.

3 THE COURT: Sir, please step up into the witness box  
4 and remain standing.

5 (Witness sworn)

6 THE COURT: Please pull your chair up to the  
7 microphone. And begin by stating your full name and spelling  
8 your last name for the record.

9 THE WITNESS: Le Nguyen. Last name is spelled  
10 N-G-U-Y-E-N.

11 LE NGUYEN,

12 called as a witness by the Defendant,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MIRON:

16 Q. Good morning, Agent Nguyen. Where are you employed?

17 A. I'm employed at the FBI.

18 Q. In what division?

19 A. I am currently employed in the training division.

20 Q. Prior to that appointment, were you employed in the New  
21 York counterterrorism unit?

22 A. Yes.

23 Q. Were you the main case agent assigned to investigate this  
24 case initially?

25 A. I was the main case agent for the Samy El-Goarany

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Nguyen - direct

1 investigation.

2 Q. Okay. When were you assigned to investigate the Samy  
3 El-Goarany situation?

4 A. In February of 2015.

5 Q. As part of that assignment, did you meet with the  
6 El-Goarany family, in other words, Tarek, Teresa, and Mohammed,  
7 in early February of 2015?

8 A. Yes.

9 Q. At that time, you were not sure where Samy was, right?

10 A. No.

11 Q. And you weren't sure what he was doing, correct?

12 A. When we were initially informed, no.

13 Q. In fact, the family had told you he was doing humanitarian  
14 work. Right? Early in February 2015?

15 A. The -- as a whole, the family was unsure of what he was  
16 doing.

17 Q. Did you speak to the family as a unit or individually when  
18 you were first meeting with them?

19 A. I spoke with the aunt, the mother and the father, initially  
20 our initial contact was together.

21 Q. And then Tarek individually?

22 A. Later on, yes.

23 Q. As part of your investigation, you told the El-Goarany  
24 family to let you know if Samy contacted them, right?

25 A. Yes.

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Nguyen - direct

1 Q. In fact, on February 8, 2015, you received a call from  
2 Teresa El-Goarany, correct?

3 A. Yes.

4 Q. And she had been contacted by Samy.

5 A. Yes.

6 Q. She had been called by Samy?

7 A. Yes.

8 Q. She didn't call you right away, correct?

9 A. You mean when she was contacted by Samy?

10 Q. Right. There are several hours that passed before she  
11 called you, right?

12 A. Yes.

13 Q. In fact, she didn't tell her husband until five hours after  
14 she received the call, correct?

15 MR. QUIGLEY: Objection, hearsay.

16 THE COURT: Overruled.

17 A. I would have to look at the 302 to look at the exact amount  
18 of time.

19 Q. Okay. When did she receive the call from Samy on  
20 February 8?

21 A. She received the call at 8:02 in the morning.

22 Q. When did she tell her husband, Mohammed El-Goarany?

23 A. She did not tell her husband until 1:10 p.m.

24 Q. But she did tell him, according to your notes, right?

25 A. Yes.

H1N3GAM1

Nguyen - direct

1 Q. Indeed, he urged her to call you, correct?

2 A. Yes.

3 Q. And so you spoke to both of them about this phone call,  
4 right?

5 A. I spoke to Teresa.

6 Q. Well, did you not remind Mohammed individually that he  
7 needs to let you know if Samy contacts the family again?

8 Directing your attention to the bottom of your 302.

9 A. Yes.

10 Q. So you did speak to Mohammed El-Goarany on that day about  
11 Samy having contacted the family?

12 A. Yes.

13 Q. You can put that aside.

14 On February 16, you heard from Tarek -- I'm sorry, you  
15 heard from Mohammed El-Goarany, right?

16 A. We had numerous contacts with the family in early February.  
17 I would have to look at the -- my notes or the 302 for the  
18 specific date.

19 Q. Let me show you them.

20 Does that refresh your recollection as to the date  
21 Tarek El-Goarany contacted you? I mean Mohammed El-Goarany  
22 contacted you in relation to Tarek?

23 A. Yes.

24 Q. It's fair to say that Tarek had received a Facebook  
25 communication from his brother on that day, February 16, 2015?

H1N3GAM1

Nguyen - direct

1 A. Yes.

2 Q. And he showed that message to both of his parents?

3 MR. QUIGLEY: Objection, hearsay.

4 THE COURT: Overruled.

5 Q. According to your investigation?

6 A. Yes.

7 Q. Mohammed indeed told you that, right?

8 A. Yes.

9 MR. QUIGLEY: Objection, hearsay.

10 THE COURT: Overruled.

11 Q. So, to be clear, I'm going to read the message that Tarek  
12 received and you let me know if that's the one Mohammed told  
13 you about.

14 "I'm so sorry for the sudden disappearance, man. I've  
15 got a lot of explaining to do, but first off, I just want to  
16 say I'm sorry for not being aware about the protocol in my new  
17 company. Hours after our last PQ chat conversation, I had my  
18 phone and laptop taken from me by the company for safety  
19 reasons. They're going to give it back to me after my training  
20 is over inshallah. Right now I'm going through the religious  
21 training, which will end in nine days. Then I'm going to be  
22 enrolled in my main training course, which will take a month to  
23 complete. After that, I'll be a regular employee and they'll  
24 give me back my stuff, all of my stuff, and I can contact you  
25 24/7 like I did before. That will probably be around the end

H1N3GAM1

Nguyen - direct

1 of March to mid-April."

2 Is that the Facebook message that Mohammed had seen on  
3 February 16?

4 A. Yes.

5 Q. So, did you ask Mohammed what he thought his son meant by  
6 "religious training"?

7 A. No.

8 Q. Did you ask him what he thought Samy meant by "main  
9 training course"?

10 A. No.

11 Q. Or the company? Did you ask him what he thought Samy meant  
12 by "the company"?

13 A. No.

14 Q. But he did tell you that he had seen that message.

15 A. Yes.

16 Q. And that Teresa had seen that message?

17 A. Yes.

18 Q. Okay. As part of your investigation, you were looking for  
19 people who were aware Samy had left, right? Had left the  
20 country?

21 A. Can you reask the question?

22 Q. Early on in your investigation, you were looking for people  
23 who were aware Samy El-Goarany had departed the country.

24 A. Yes.

25 Q. And you wanted to know what they knew about his travel,

H1N3GAM1

Nguyen - direct

1 correct?

2 A. Yes.

3 Q. So, you spoke with Nico, right?

4 A. Eventually we spoke with Nico, yes.

5 Q. And you spoke with Khalafalla Osman eventually?

6 A. Yes.

7 Q. And Khalafalla Osman had Surespot, right? On his phone.

8 A. I'd have to look at my notes to see.

9 Q. Okay.

10 A. Yes.

11 Q. To be clear, you spoke with Khalafalla Osman in July of  
12 2015, right?

13 A. Yes.

14 Q. Is that the first time you spoke with him, as far as you  
15 know?

16 A. Yes, that was the first time we spoke with him.

17 Q. Khalafalla Osman's Surespot name was nohopeboy.

18 A. Yes, that is -- that's what he told us during the  
19 interview.20 Q. He had communicated with Samyelgo on Surespot, right, based  
21 on your investigation?

22 A. Yes.

23 Q. Okay. In the course of your investigation, you learned  
24 that Khalafalla Osman and Samy El-Goarany were good friends,  
25 right?

H1N3GAM1

Nguyen - direct

1 A. Yes.

2 Q. And they spoke frequently on Google Hangout, correct?

3 A. Google Hangout is one of the platforms in which they used  
4 to talk to each other, yes.

5 Q. They talked about politics, right? Middle Eastern  
6 politics?

7 A. They conversed about many topics. That was one of them,  
8 yes.

9 Q. They talked about religion too?

10 A. Yes.

11 Q. And he had spoken to Samy a lot over the phone, right?

12 A. I would have to look at the phone records to see the  
13 frequency.

14 Q. Putting that aside, you knew that Samy El-Goarany had  
15 visited Khalafalla Osman in the fall of 2014, right? You  
16 learned that?

17 A. Yes.

18 Q. He went, Samy El-Goarany went up to Albany to see  
19 Khalafalla Osman, right?

20 MR. QUIGLEY: Objection, hearsay.

21 THE COURT: Overruled.

22 A. Yes.

23 Q. And in that meeting, Samy El-Goarany asked Khalafalla Osman  
24 to turn off his phone, right?

25 A. Yes.

H1N3GAM1

Nguyen - direct

1 Q. And he told, Samy El-Goarany told Khalafalla Osman he was  
2 going to do something illegal in Syria, correct?

3 A. I'd have to look at my notes.

4 Q. Let me direct your attention to a particular part.

5 A. Sure.

6 He -- Osman had asked if it was legal.

7 Q. Let me take that back first.

8 A. Okay, sure.

9 Q. Okay. So, to be clear, Samy El-Goarany told Khalafalla  
10 Osman, the original story he told Osman and their friends is  
11 that, about the computer system internship was a lie, right?  
12 He said that in the fall of 2014.

13 Do you need to look at your notes again?

14 A. The -- sure.

15 Can you repeat your question?

16 Q. Sure. It's your understanding that Samy El-Goarany began  
17 this conversation with Khalafalla Osman by explaining that  
18 indeed Samy El-Goarany had lied when he told everybody he was  
19 going to do an internship.

20 A. He did lie to people.

21 Q. And then he said "turn off your phone," right?

22 A. Yes.

23 Q. And then Samy El-Goarany said he's going to do something in  
24 Turkey and Syria, he's going to do humanitarian work in Turkey  
25 and Syria.

H1N3GAM1

Nguyen - cross

1 A. Yes.

2 Q. And Khalafalla Osman you're asked Samy El-Goarany "is what  
3 you're doing legal." Right?

4 A. Yes.

5 Q. Samy El-Goarany said no.

6 A. Yes.

7 Q. Khalafalla Osman then asked "is what you're doing  
8 militant." Right?

9 A. Yes.

10 Q. And Samy El-Goarany said no. Correct?

11 A. Yes.

12 Q. So Samy El-Goarany, he told Khalafalla Osman he was going  
13 to do something illegal but not violent in Syria, correct?

14 A. He said that it wasn't going to be militant.

15 Q. Okay.

16 MS. MIRON: One second, your Honor. No further  
17 questions.

18 THE COURT: Cross-examination.

19 MR. QUIGLEY: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. QUIGLEY:

22 Q. Good morning, Agent Nguyen.

23 A. Good morning.

24 Q. Agent Nguyen, just so we are on the same page, you said you  
25 work in the training division of the FBI?

H1N3GAM1

Nguyen - cross

1 A. Yes.

2 Q. Where are you stationed?

3 A. Quantico, Virginia.

4 Q. How long have you been stationed in Virginia?

5 A. For a little bit over nine months.

6 Q. So since that time, other than really preparing to testify  
7 today, have you had any involvement in this case?

8 A. No, I have not.

9 Q. What do you do, just briefly, at the training division?

10 A. I am an instructor in the tactical training unit.

11 Q. That's the FBI academy?

12 A. Yes.

13 Q. That's where the new agents are trained?

14 A. Yes.

15 Q. Let's focus on some of the questions Ms. Miron asked you.

16 You were asked about a call that the El-Goarany family received  
17 from Samy El-Goarany on February 8, 2015. Do you recall that?

18 A. Yes.

19 Q. The El-Goarany family advised of that call on February 8,  
20 2015, right?

21 A. Yes.

22 Q. The same day.

23 A. Yes.

24 Q. And you were asked about a Facebook message that the  
25 El-Goarany family received from Samy El-Goarany on February 16,

H1N3GAM1

Nguyen - cross

1 2015. Do you recall that?

2 A. Yes.

3 Q. The El-Goarany family provided you, provided the FBI with  
4 that Facebook message on February 16, correct?

5 A. Yes.

6 Q. The same day.

7 A. Yes.

8 Q. You were asked at the end there some questions about an  
9 interview you had with Khalafalla Osman, right?

10 A. Yes.

11 Q. And in that interview, he recounted a meeting he had with  
12 Samy El-Goarany in about October of 2014, correct?

13 A. Yes.

14 Q. That was some time before Samy El-Goarany actually left to  
15 join ISIS, correct?

16 A. Yes.

17 Q. He left at the end of January, right?

18 A. Yes.

19 Q. During that interview, Khalafalla Osman stated that -- if  
20 you need to look at the 302, if you don't recall, just let us  
21 know we'll hand it up.

22 That Samy El-Goarany told him that what he was doing  
23 was in fact illegal, right?

24 A. Yes.

25 Q. And that he was going, when Osman asked him where he was

H1N3GAM1

Nguyen - cross

1 going, he said he was going to Raqqah, Syria, correct?

2 A. Yes.

3 Q. Are you aware of any humanitarian organizations operating  
4 in Raqqah, Syria?

5 MS. MIRON: Objection. Outside of the scope.

6 THE COURT: Overruled.

7 A. No, I am not.

8 Q. Is it correct to say that Raqqah, Syria, is the capital of  
9 ISIS, right?

10 A. Yes.

11 Q. And it had been in ISIS control since before October of  
12 2014 when this meeting supposedly took place, correct?

13 MS. MIRON: Objection. He's not an expert in ISIS.

14 THE COURT: Sustained.

15 Q. Khalafalla Osman said that after Samy El-Goarany told him  
16 this news, about joining a humanitarian organization,  
17 Khalafalla Osman went in his room and cried, correct?

18 A. Yes.

19 Q. And he was concerned that Samy El-Goarany was joining --  
20 was a government informant, correct?

21 A. Yes.

22 Q. Even though he supposedly said he was joining a  
23 humanitarian organization, right?

24 A. Yes.

25 MR. QUIGLEY: I have nothing further, your Honor.

H1N3GAM1

1 THE COURT: Any redirect?

2 MS. MIRON: Just a moment, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MIRON:

5 Q. You never heard of refugees wanting to leave Raqqah, Syria?

6 MR. QUIGLEY: Objection. Mischaracterizes his  
7 testimony.

8 THE COURT: Sustained.

9 Q. Have you ever heard of refugees wanting to leave Raqqah,  
10 Syria?

11 MR. QUIGLEY: Same objection.

12 THE COURT: Overruled.

13 A. I've heard of people trying to flee Raqqah, Syria.

14 Q. Indeed, there were many humanitarian organizations on the  
15 border of Turkey and Syria around January 2015, right?

16 MR. QUIGLEY: Objection. He's not an expert.

17 THE COURT: Sustained.

18 MS. MIRON: Your Honor, they elicited on direct the  
19 question regarding this.

20 Nothing further.

21 MR. QUIGLEY: No recross.

22 THE COURT: Agent Nguyen, you may step down.

23 (Witness excused)

24 MS. MIRON: May we have a minute, your Honor?

25 THE COURT: Sure.

H1N3GAM1

Finkel - direct

1 MS. MIRON: May we call our next witness?

2 THE COURT: Sorry?

3 MS. MIRON: We're prepared to call our next witness.

4 THE COURT: Please do.

5 MS. MIRON: We call Anna Finkel.

6 (Witness sworn)

7 THE COURT: Please be seated. Pull your seat up to  
8 the microphone and please begin by stating your full name and  
9 spelling your last name for the record.

10 THE WITNESS: Anna Elise Finkel, F-I-N-K-E-L.

11 ANNA ELISE FINKEL,

12 called as a witness by the Defendant,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MIRON:

16 Q. Good morning, Ms. Finkel.

17 A. Good morning.

18 Q. Where are you currently employed?

19 A. I'm employed by Federal Defenders of New York.

20 Q. Is that the same office as the defense?

21 A. It is.

22 Q. How long have you been working with the Federal Defenders  
23 of New York?

24 A. I've worked in the office approximately 16 years.

25 Q. What are your duties there?

H1N3GAM1

Finkel - direct

1 A. I'm responsible for reviewing documents, locating and  
2 interviewing witnesses, serving subpoenas, taking photographs,  
3 testifying at trials, things of that nature.

4 Q. You are an investigator in the office?

5 A. I am.

6 Q. Do you also review records that you receive pursuant to  
7 subpoenas?

8 A. Yes, I do.

9 Q. Are you familiar with this case?

10 A. Yes, I am.

11 Q. Have you recently been tasked with an assignment related to  
12 it?

13 A. Yes.

14 Q. What was that assignment?

15 A. I was asked to review a Twitter account to see if there  
16 were Twitter names that were associated with ISIS or that  
17 invoked ISIS in some way.

18 Q. So, before we get to that Twitter account, I'm going to  
19 show you what's in evidence as Government Exhibit 303 and  
20 direct your attention to the second page. You can display  
21 that. The second page of 303. If you would highlight these.

22 What Twitter account is this?

23 A. This Twitter account is AbuMurad\_IS.

24 Q. Is it associated with this e-mail address?

25 A. Yes, it is associated with the e-mail address

H1N3GAM1

Finkel - direct

1 Samybey1@Gmail.com.

2 Q. When was it created, this account?

3 A. This was created in May, on May 11 of 2015.

4 Q. You can put that account aside.

5 Let me show you Defense Exhibit 304. Is this a fair  
6 and accurate copy of the account information associated with  
7 the Elgorhythm Twitter account?

8 A. Yes.

9 MS. MIRON: I would ask this exhibit be admitted.

10 MR. DeFILIPPIS: No objection, your Honor.

11 THE COURT: It will be admitted.

12 (Defendant's Exhibit 304 received in evidence)

13 MS. MIRON: And ask that Exhibit 304 be published.

14 THE COURT: It may.

15 MS. MIRON: And highlighted.

16 Q. Is this the same e-mail address as the AbuMurad\_IS address?

17 A. It is.

18 Q. When was it open?

19 A. This was opened on August 12, 2013.

20 Q. As part of your task, were you asked to identify particular  
21 people on the following list of this account?

22 A. On the Elgorhythm account, yes.

23 Q. How did you select who to identify?

24 A. I looked through the list and I was looking for words or  
25 phrases that could be ISIS related.

H1N3GAM1

Finkel - direct

1 Q. Let me show you Defense Exhibit 300-BB.

2 A. Thank you.

3 Q. Just explain to the jury what following means, according to  
4 Twitter?

5 A. According to Twitter, these are the individuals that Samy  
6 was following on Twitter. There are other Twitter members and  
7 he was following their Twitter feeds, their postings.

8 Q. Did you highlight particular individuals that -- well, the  
9 Elgorhythm account was following?

10 A. I did.

11 Q. Do you recall which individuals you highlighted?

12 A. If I can look at my notes that would help refresh my  
13 recollection.

14 MS. MIRON: May I, your Honor.

15 THE COURT: You may.

16 MS. MIRON: I would ask that Defense Exhibit 300-BB be  
17 admitted.

18 MR. DeFILIPPIS: No objection, your Honor.

19 THE COURT: It will be admitted.

20 (Defendant's Exhibit 300-BB received in evidence)

21 MS. MIRON: And published, please.

22 Q. Did you find any particular names of Twitter account  
23 holders in the following list?

24 A. I did. There was one on the first page, it's  
25 IS\_worldpress.

H1N3GAM1

Finkel - direct

1 Q. Can you highlight that one. How did you identify that one?

2 A. IS stands for Islamic State.

3 Q. What about aldawlawi? Did you locate that one?

4 A. I did.

5 Q. Dawla meaning Daesh?

6 A. Daesh.

7 Q. Of those two accounts, are they still active as far as you  
8 know?

9 A. No, they've been suspended.

10 Q. What about Ghazi Shami on that same page; do you know if  
11 that account still active?

12 A. That account has been suspended.

13 Q. Was the Elgorhythm account following that account?

14 A. Yes.

15 Q. By the way, why in your knowledge would Twitter suspend an  
16 account?

17 MR. DeFILIPPIS: Objection, your Honor.

18 THE COURT: Sustained.

19 Q. Have you had the opportunity to review Twitter's suspension  
20 policies?

21 A. Yes.

22 MR. DeFILIPPIS: Objection, your Honor. Hearsay.

23 THE COURT: Overruled.

24 Q. Is one of those reasons for abusive or threatening  
25 language?

H1N3GAM1

Finkel - direct

1 A. Yes.

2 MR. DeFILIPPIS: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. DeFILIPPIS: Your Honor, we move to strike the  
5 last answer.

6 THE COURT: Granted.

7 Q. Are there any other following individuals that you notice  
8 in the Defense Exhibit 300-BB?

9 A. There was the Ghazi\_Shami. And then the following page, I  
10 guess it is page two, it's GhaziShami one word.

11 Q. And Shami is another way of saying Syria, right?

12 A. Yes.

13 MS. MIRON: Could you just highlight Ghazi Shami in  
14 the middle of the page. Thank you.

15 Q. What does it mean to be a Twitter follower?

16 A. These are individuals that were following Samy, viewing his  
17 feeds, view things he had posted on Twitter.

18 Q. On occasion, is it possible for the followers and following  
19 to communicate via direct message?

20 A. Yes.

21 MR. DeFILIPPIS: Objection, your Honor.

22 THE COURT: Overruled.

23 Q. I'd like to show you what had been marked as Defense  
24 Exhibit 300-CC. Is this a fair copy of the followers list for  
25 the Elgorhythm account? Fair and accurate and complete copy?

H1N3GAM1

Finkel - direct

1 A. Yes.

2 MS. MIRON: I would ask that this Defense Exhibit  
3 300-CC be admitted.

4 MR. DeFILIPPIS: No objection, your Honor.

5 THE COURT: 300 CC will be admitted.

6 (Defendant's Exhibit 300-CC received in evidence)

7 Q. Did you locate any ISIS-related names on this list?

8 A. I did.

9 Q. Do you recall which names?

10 A. If I can take a look at my notes, that would help refresh  
11 my recollection.

12 MS. MIRON: May I, your Honor?

13 THE COURT: You may.

14 MS. MIRON: I would ask that Defense Exhibit 300-CC be  
15 published.

16 THE COURT: Very well.

17 Q. So, tell the jury what names you located that are ISIS  
18 related.

19 A. The first one DaeshReloaded\_. Further down on that page,  
20 IslamicState1\_FB.

21 Q. Any others on that page?

22 A. No.

23 Q. What about the next page?

24 A. No.

25 On the following page IS\_Ordु.

H1N3GAM1

Finkel - direct

1 Q. Of those three, do you know if any of them are still  
2 active?

3 A. No, they've been suspended.

4 Q. Did you locate any others?

5 A. No.

6 Q. Did you have the opportunity to compare the following and  
7 followers of both of the two Samybey1 accounts?

8 A. Yes.

9 Q. Are there any in common?

10 A. Yes, there is some overlap.

11 Q. Okay. So let me show you Defense Exhibit DD. Is this a  
12 fair and accurate copy of the overlap between the follower and  
13 following lists of the two Samybey1 accounts?

14 A. Yes.

15 Q. Is it a complete list of the overlap?

16 A. Yes.

17 MS. MIRON: I'd ask that Defense Exhibit 300-DD be  
18 admitted.

19 MR. DeFILIPPIS: No objection, your Honor.

20 MS. MIRON: And published.

21 THE COURT: Very well.

22 (Defendant's Exhibit 300-DD received in evidence)

23 MS. MIRON: And highlighted.

24 Q. So to be clear, the top category are the following list  
25 that's in common between the two Twitter accounts?

H1N3GAM1

Finkel - direct

1 A. That's correct.

2 Q. So, when Samybey1 opened his AbuMurad\_IS, these following  
3 users continued to be associated with Samybey's account?

4 A. Yes, he was following these people on both accounts.

5 Q. And what are they, if you can just read them for the jury.

6 A. Sure. AJEnglish, agenda\_kid, GleamingRazor, GlenFordBAR,  
7 IslamRahman, Mondoweiss, RasalGhul321, SyriaDirect,  
8 abdelbariatwan, intifada, mamzbondok, marwanbishara.

9 Q. What about followers?

10 A. GleamingRazor was following him on both accounts.

11 Q. Based on your review of the Twitter records in this case,  
12 is it possible to match up the names of the account holders  
13 with the ID numbers on the Twitter records?

14 A. No, not based on the information that I have, that I had.

15 Q. So, fair to say you aren't able to tell which of these  
16 account holders communicated directly with the Samybey1  
17 accounts?

18 A. That's right.

19 MS. MIRON: I have nothing further.

20 THE COURT: Cross-examination?

21 MS. MIRON: Oh. Your Honor, may I ask one additional  
22 question?

23 THE COURT: Sure.

24 MS. MIRON: By "one," I mean a few additional  
25 questions.

H1N3GAM1

Finkel - direct

1                   THE COURT: Go ahead.

2 Q. I'd like to show you what's being marked as Defense Exhibit  
3 200. Are you familiar with this record?

4 A. I am.

5 Q. Is it a Kik account record?

6 A. It is.

7 Q. On the last page, do you see a certification?

8 A. Yes.

9                   MS. MIRON: I would ask that Defense Exhibit 200 be  
10 admitted as a self-authenticating business record.

11                  MR. DeFILIPPIS: No objection, your Honor.

12                  THE COURT: It will be admitted.

13                  (Defendant's Exhibit 200 received in evidence)

14                  MS. MIRON: And published to the jury.

15                  THE COURT: Very well.

16 Q. Could you highlight the middle box of information. Which  
17 e-mail address is associated with this Kik account?

18 A. Samybey1@Gmail.com.

19 Q. What is Kik?

20 A. Kik is an instant messaging messenger application that  
21 people use on their cell phones.

22 Q. Do you know based on this record when the account was  
23 opened?

24 A. The account was open on November 4 of 2014.

25 Q. What is the first name associated with the account?

H1N3GAM1

Finkel - cross

1 A. The first name is Abu Gehad.

2 Q. Based on this record, are you able to tell with whom Abu  
3 Gehad Salim communicated on Kik?

4 A. No. Based on the paperwork, I can't.

5 Q. Okay.

6 MS. MIRON: I'm finished now, thank you.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. DeFILIPPIS:

10 Q. Good morning, Ms. Finkel.

11 A. Good morning.

12 Q. You work for the Federal Defenders of New York. That's  
13 what you testified, is that right?

14 A. I do.

15 Q. Your job is to investigate in coordination with defense  
16 counsel, is that right?

17 A. Yes.

18 Q. You don't work for the government?

19 A. No.

20 Q. Your job is to aid investigations in support of the Federal  
21 Defenders' clients, right?

22 A. Yes.

23 Q. In fact, in this case, you received various documents, is  
24 that right, in connection with the case?

25 A. Yes.

H1N3GAM1

Finkel - cross

1 Q. In fact, we just looked at Twitter records for -- was it  
2 two different Twitter accounts?

3 A. Yes.

4 Q. Those records were provided to you by the government, is  
5 that right?

6 A. That's right.

7 Q. In fact, those weren't the only documents provided in  
8 connection with those accounts, right?

9 A. I believe so. I mean, I reviewed these documents from the  
10 testimony today.

11 Q. So the two documents we looked at, those are documents that  
12 the Federal Defenders got from the government as part of its  
13 investigation, right?

14 A. Yes.

15 Q. In fact, there were also communications, the contents of  
16 communications associated with those accounts, right?

17 A. I believe so.

18 Q. And government provided those to the Federal Defenders?

19 A. I believe so.

20 Q. And then the contents of the Tweets, for example, again,  
21 that came from the government?

22 A. Yes.

23 Q. So these aren't things that you uncovered as part of your  
24 investigative work?

25 A. No.

H1N3GAM1

Finkel - cross

1 Q. I just want to turn briefly to the Kik records that we just  
2 looked at.

3 A. Sure.

4 Q. Defense Exhibit 200. Just to be clear, the Abu Gehad name  
5 associated with that account, you are not able to see any  
6 communications associated with that Kik account, is that  
7 correct?

8 A. No.

9 Q. In fact, you have no idea whether there were any  
10 communications whatsoever associated with that account, right?

11 A. No.

12 MR. DeFILIPPIS: Thank you, your Honor. No further  
13 questions.

14 MS. MIRON: Nothing further, your Honor.

15 THE COURT: Ms. Finkel, you may step down.

16 (Witness excused)

17 MS. MIRON: May we take a few minutes, your Honor?

18 THE COURT: I'm sorry?

19 MS. MIRON: I believe Ms. Shroff is in the hallway.  
20 Can I go retrieve her?

21 THE COURT: Okay.

22 Is the defense prepared to call its next witness?

23 MS. SHROFF: Thank you, your Honor. The defense calls  
24 Ms. Sherry Dubrow.

25 (Witness sworn)

H1N3GAM1

Dubrow - direct

1           THE COURT: Please pull your seat up to the microphone  
2 and please begin by stating your full name.

3           THE WITNESS: Sherry.

4           THE COURT: And spelling your last name for the  
5 record.

6           THE WITNESS: Thank you. Sherry Lee Dubrow,  
7 D-U-B-R-O-W.

8           SHERRY L. DUBROW,

9           called as a witness by the Defendant,

10          having been duly sworn, testified as follows:

11          DIRECT EXAMINATION

12          BY MS. SHROFF:

13          Q. Good morning, Ms. Dubrow.

14          A. Good morning.

15          Q. Ms. Dubrow, where do you live?

16          A. I live in Goodyear, Arizona.

17          Q. I'm sorry, could you sit back a little bit? There you go.

18                 Now tell me again where you live?

19          A. Goodyear, Arizona.

20          Q. Do you know somebody named Jimmy Gammal?

21          A. Yes.

22                 (Continued on next page)

H1N5gam2

Dubrow - direct

1 BY MS. SHROFF:

2 Q. And how long have you known Mr. El-Gammal?

3 A. Over 20 years.

4 Q. And how is it that you came to know Mr. El-Gammal?

5 A. He's my ex son-in-law.

6 Q. So, he was married to your daughter?

7 A. Yes.

8 Q. And what is your daughter's name?

9 A. Celeste Mann Dubrow.

10 Q. How long has it been since they were married?

11 A. I'm sorry. I don't understand.

12 Q. That was not a good question.

13 When did they divorce?

14 A. I believe two, three years ago. To be honest with you, I'm  
15 not sure because nothing has changed in our relationship, so.

16 Q. So, since their divorce have you kept in touch with  
17 Mr. El-Gammal?

18 A. Oh, absolutely.

19 Q. Now, could you tell me, please, if you and Mr. El-Gammal  
20 socialize in the same circles?

21 A. Well, frequently, yes.

22 Q. And what kind of events is it that you two attend together?

23 A. Well, I belong to several motor cycle groups and we do a  
24 lot of charity work and that involves getting people there to  
25 spend money, and Jimmie would come and support those groups

H1N5gam2

Dubrow - direct

1 with me.

2 Q. Did there come a time Ms. Dubrow, where you were employed  
3 by Mr. El-Gammal?

4 A. Yes.

5 Q. And could you tell me when that was?

6 A. I believe it was right around 2009, 2010.

7 Q. And could you tell the jury how that came about?

8 A. Sure.

9 Q. Jimmie had a business buying and selling vehicles,  
10 repairing and selling them, and I would help him to do that.  
11 He needed me to run errands to get parts for cars, paint.  
12 Those kinds of things.

13 Q. And, for how long did you work for him?

14 A. Off and on I have worked for him ever since, up until maybe  
15 last year.

16 Q. And would you say that while working for him you became  
17 familiar with his customers and his business acquaintances?

18 A. Yes.

19 Q. And, have you been to Mr. El-Gammal's home?

20 A. Oh yes.

21 Q. And where is his home?

22 A. In Avondale, Arizona.

23 Q. And do you have a key to Mr. El-Gammal's home?

24 A. I do.

25 Q. And do you have a key to Mr. El-Gammal's garage?

H1N5gam2

Dubrow - direct

1 A. The garage is actually a combination lock but, yes, I have  
2 that combination.

3 Q. And could you tell us why that is?

4 A. Well, one of his businesses was buying and selling  
5 evaporative coolers, and if he wasn't able to meet a client, I  
6 would go over and conduct the sale of that cooler.

7 Q. Now, would there be any other reason you would go to his  
8 home?

9 A. Sure. He has a cat and I would go and feed the cat if he  
10 was not in town.

11 Q. Now, Ms. Dubrow, there came a point in October of 2015 when  
12 Mr. El-Gammal traveled -- I'm sorry, October of 2014 when  
13 Mr. El-Gammal traveled to New York. Did you know that he was  
14 traveling in 2014?

15 A. Beforehand? No. Not usually.

16 Q. And would it be fair to say that Mr. El-Gammal traveled  
17 frequently?

18 A. Yes.

19 Q. And he traveled without too much planning?

20 A. Very much, yes.

21 Q. Now, let me show you what is marked as Government Exhibit  
22 512 and if you could please display pages 159 to 160? Is there  
23 a telephone number on that page, Ms. Dubrow, that you  
24 recognize?

25 A. Yes.

H1N5gam2

Dubrow - direct

1 Q. And what is that telephone number?

2 A. 623-692-7880 and 623-249-9677.

3 Q. So let's start, please, with the number ending at 7880.

4 Whose number is that?

5 A. That's Jimmie's -- Jimmie's cell phone.

6 Q. Who's number is the number that follows which is 623,  
7 ending with 9677?

8 A. That's my daughter Celeste.

9 Q. And could you take a look for me on the next column and see  
10 what the dates are of those calls?

11 A. October 22nd.

12 Q. No, no. Can you just highlight the dates for her? There  
13 you go. Take a look.

14 A. Okay. October 6th.

15 Q. Now, if you could flip over to page 160 of Government  
16 Exhibit -- do you see the same phone number again, Ms. Dubrow?

17 A. Yes.

18 Q. And could you tell the jury, please, the dates which are  
19 reflected on the column?

20 A. October 7th, 2014.

21 Q. And below that?

22 A. October 8th, 2014.

23 Q. Now, Ms. Dubrow, would it be fair to say that you know  
24 Mr. El-Gammal well?

25 A. Yes.

H1N5gam2

Dubrow - direct

1 Q. And do you know him to pray five times a day?

2 A. Oh, no.

3 Q. And do you know him to go to the mosque daily?

4 A. Oh, no. No.

5 Q. Weekly?

6 A. No.

7 Q. Monthly?

8 A. No.

9 Q. Your Honor, at this time I would like to introduce into the  
10 record a business record -- a document from Expedia which is a  
11 business record certification of Expedia documents, if I may?

12 THE COURT: Okay. Any objection?

13 MR. DEFILIPPIS: No objection, your Honor.

14 THE COURT: Very well. It will be received. What is  
15 the exhibit number?

16 MS. SHROFF: The exhibit number is 806.

17 (Defendant's Exhibit 806 received in evidence)

18 BY MS. SHROFF:

19 Q. Ms. Dubrow, does that document tell you about the trips  
20 that Mr. El-Gammal took including trips to Las Vegas and  
21 California?

22 A. Yes.

23 Q. Thank you.

24 Ms. Dubrow, since the time of Mr. El-Gammal's divorce  
25 from your daughter, has he still remained part of your family?

H1N5gam2

Dubrow - direct

1 A. Oh, absolutely. He's included in Christmas holidays,  
2 Thanksgiving; all of that. Of course.

3 MS. SHROFF: I have no further questions, your Honor.  
4 Thank you.

5 THE COURT: Ladies and gentlemen, it is almost 10:30  
6 so let's take our morning break. 15 minutes. Please, do not  
7 discuss the case.

8 (Continued on next page)

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Dubrow - direct

1 (Jury not present)

2 THE COURT: You can step down.

3 (Witness steps down)

4 THE COURT: 15 minutes.

5 (Recess)

6 MS. MIRÓN: Your Honor, scheduling issue.

7 MS. SHROFF: I have an update for Ms. Manley. She  
8 thinks that she should be getting to New York City in about a  
9 half hour. I'm not sure how great she is about finding a  
10 parking garage but somebody is trying to help her.

11 THE COURT: Also, New York City is the north Bronx.

12 MS. SHROFF: Well, I could call and ask but I am  
13 assuming she means our area. I can step out and ask.

14 MS. MIRÓN: Here are the imminent issues.

15 Our next witness is the interpreter who is on his way,  
16 he expects to be here at 11:00. So, I don't know how long the  
17 cross will be but there may be a little bit of a gap. And then  
18 the next witness and only other witness we have available for  
19 today is Mr. Osman, so we would ask to take an early break for  
20 lunch and if it resolves favorably we would call him in the  
21 afternoon.

22 THE COURT: How, because I haven't had an opportunity  
23 to think mechanically, how we go through this. So, Ms. Manley  
24 appears, she makes her record that she believes, I assume, that  
25 Mr. Osman may be in jeopardy should he testify, and then I

H1N5gam2

Dubrow - direct

1 conduct some sort of in camera proceeding to determine whether  
2 the fear is well placed or well-founded. Who is in there with  
3 me?

4 MS. MIRÓN: The defense is asking to be present, it is  
5 our witness. We have proposed possible direct questions that  
6 we would pose to the Court and the Court would be permitted to  
7 hear Mr. Osman's responses. We don't want the government to  
8 hear our work product before it is in court. I think I can  
9 provide the case cite for your Honor but there was a Second  
10 Circuit 2016 summary order where the process was defense  
11 counsel was permitted to conduct, essentially, a mock  
12 examination of a witness outside the presence of the jury in  
13 the presence of the Court, but based on that reading I don't  
14 know if the government was permitted to be present. We were  
15 asking to be present without the government.

16 MR. QUIGLEY: Your Honor, I think inasmuch as his  
17 answers, either on direct or on cross, could raise a Fifth  
18 Amendment issue, I don't think either side should be present  
19 because the questions we may ask may raise as much of a Fifth  
20 Amendment issue for him as would defense.

21 THE COURT: Do you have the questions written out?

22 MS. SHROFF: I actually do but it's -- I did it very  
23 late last night and I do mean late, but again, look, the  
24 government is still not saying what his exposure is. It just  
25 seems --

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Dubrow - direct

1                   THE COURT: Well, first of all, isn't it fairly clear  
2 that there is at least 1001 liability?

3                   MS. SHROFF: No, I don't think it is that clear  
4 because there may not be a liability where somebody corrects a  
5 false statement within minutes. The thing is it isn't just  
6 what I think the exposure is or what you think the exposure is,  
7 with all due respect to the Court, the only person who can  
8 charge him with an offense are the people at that table.

9                   We could cut this short, we could have Mr. Osman take  
10 the witness stand literally at 11:30 or noon. Right? They  
11 could stand up and tell the Court, look. We think he has  
12 exposure on this, this, and this question. Or, he has no  
13 exposure. Whatever it is, even if they want to tell the Court  
14 ex parte without us, that's fine, but I think that Mr. Osman is  
15 entitled to know. How can he invoke if he is not told by the  
16 very agents that are responsible for charging him with a crime  
17 whether or not he has reason to invoke. It is almost like  
18 they're inviting him to invoke. On the one hand they're  
19 inviting an invocation and then they're saying because he has  
20 invoked, Judge, just don't have him testify at all and preclude  
21 this witness.

22                  THE COURT: Well, the assumption in at least first  
23 part of your statement is that there is only one inconsistent  
24 statement that he made as between the two meetings and I don't  
25 know that that is the case. Certainly, as I sit here, I don't

H1N5gam2

Dubrow - direct

1 know the case law but I think that my -- something in the back  
2 of my memory banks tells me that where someone corrects,  
3 promptly corrects a misstatement there may not be liability but  
4 I don't want to rely on that. Certainly if it is my client who  
5 is in jeopardy.

6 But, Mr. Quigley, is there only one statement that is  
7 arguably inconsistent?

8 MR. QUIGLEY: I think there are a couple, your Honor.

9 The broader question is was Mr. Osman being forthright  
10 in both interviews. I mean, to be clear, we did not -- you  
11 know, his attorney reached out to us and said he is going to  
12 invoke. We didn't suggest to him that he should invoke. The  
13 reason, as I said before, the only reason we had a proffer  
14 agreement with him is because his attorney wanted one and  
15 wouldn't talk to us without one. So, invoking -- we would  
16 frankly prefer he didn't invoke and just testify because we are  
17 trying to avoid invocation in front of the jury and a side  
18 show. That's our main concern.

19 THE COURT: Let's get the jury.

20 MS. SHROFF: Your Honor, one last thing.

21 THE COURT: Sure.

22 MS. SHROFF: Mr. Quigley and Ms. Mirón and I actually  
23 had a similar experience in a case where Mr. Quigley put a  
24 client of ours into the grand jury and Mr. Quigley, as the law  
25 requires, insisted that the witness invoke, question by

H1N5gam2

Dubrow - direct

1 question, and Mr. Quigley properly educated both me and  
2 Ms. Mirón that you can only invoke per question. So, per  
3 Mr. Quigley's direction, Ms. Mirón and I had the witness go  
4 into the grand jury and exit the grand jury after each specific  
5 question because Mr. Quigley and the case law required, and  
6 properly, that invocation be narrow and only on the question  
7 where the government believes there is exposure. I would cite  
8 the case for you but, as Mr. Quigley well knows, it was sealed  
9 and it was before Judge Andrew Carter.

10 Thank you.

11 THE COURT: Let's get the jury.

12 And is it the case that if he invokes as to any  
13 question that he ought not be allowed to testify?

14 MR. QUIGLEY: That's our view, your Honor, and I think  
15 that is consistent with the practice in prior cases. As  
16 Ms. Shroff actually pointed out, there is no pointed assertion  
17 of the Fifth Amendment but Courts and Courts that we cited in  
18 our letter have repeatedly upheld the preclusion of testimony  
19 of any testimony from the witness when the witness invokes and  
20 that would make no sense if those cases -- those cases would  
21 make no sense if you say, oh, we are going to ask him only the  
22 seven questions he doesn't invoke on.

23 MS. SHROFF: Your Honor, that's not true, but  
24 Mr. Quigley knows once a person invokes the Department of  
25 Justice is required to take a step and determine whether or not

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Dubrow - direct

they will immunize him. The Department of Justice is also required to flush out whether or not they will offer him a non-prosecution agreement. The Department of Justice is also required to inform the Court why they are not taking either of those two steps.

Also, your Honor, if the testimony on specific questions is precluded, the witness' prior statements are, in fact, admissible at a trial. There is no such thing that just because a witness invokes the defendant is then left without a remedy, especially where the information being elicited is Brady. So, we disagree with what Mr. Quigley is saying. And, since the jury is coming in, we can take this up later, if the Court wishes.

THE COURT: We will talk later.

(Continued on next page)

H1N5gam2

Dubrow - cross

1 (Jury present)

2 THE COURT: Everyone, please, be seated.

3 Cross-examination.

4 MR. DEFILIPPIS: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. DEFILIPPIS:

7 Q. Good morning, Ms. Dubrow.

8 A. Good morning.

9 Q. You are the defendant's ex mother-in-law, correct?

10 A. Correct.

11 Q. Fair to say you don't see everything he says or does, for  
12 example, online; is that right?

13 A. Correct.

14 Q. You don't see his online communications all of them, is  
15 that right?

16 A. Correct.

17 Q. You don't see what he says privately with other people on  
18 his computer; is that right?

19 A. Correct.

20 Q. Now, you mentioned in October 2014 trip that he took to New  
21 York?

22 A. Yes.

23 Q. You did not accompany him on that trip, correct?

24 A. No.

25 Q. And so you do not know what he did on that trip, correct?

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1 A. Correct.

2 MR. DEFILIPPIS: Thank you, your Honor.

3 THE COURT: Anything further?

4 MS. SHROFF: No, your Honor. Thank you.

5 THE COURT: Ms. Dubrow, you may step down.

6 THE WITNESS: Thank you, your Honor.

7 (Witness excused)

8 THE COURT: Ms. Mirón?

9 MS. MIRÓN: Your Honor, at this time we would ask to  
10 read a stipulation into the record.

11 THE COURT: Very well.

12 MS. MIRÓN: It is Defendant's Exhibit 800 and it  
13 states:

14 It is hereby stipulated agreed, by and between the  
15 United States of America and by Ahmed Mohammed El Gammal, the  
16 defendant by and through his counsel Sabrina Shroff, Annalisa  
17 Miron and Daniel Habib, and Preet Bharara, United States  
18 Attorney for the Southern District of New York, Andrew J.  
19 DeFilippis, Brendan F. Quigley, Negar Tekeei, assistant United  
20 States Attorneys, of counsel, that:

21 Defendant's Exhibits 401, 100-BB-T, 100-CC-T,  
22 122-AA-T, 122-BB-T, 122-CC-T, 122-DD-T, 122-EE-T, 122-FF-T,  
23 122-GG-T, 122-HH-T, 123-AA-T contain true and accurate Arabic  
24 to English translations of Arabic language materials contained  
25 in Government's Exhibits 2, 100, 122, and 123. Signed by the

1 H1N5gam2

2 parties

3 THE COURT: Very well.

4 MS. MIRÓN: And may we approach briefly?

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25 THE COURT: Yes.

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1 (At side bar)

2 MS. MIRÓN: This is the timing issue I was flagging.  
3 So, we have about 10 more minutes until he arrives.

4 THE COURT: So we will wait.

5 MS. MIRÓN: Thank you.

6 THE COURT: Ladies and gentlemen, the wind is playing  
7 havoc with certain witnesses' travel and so our next witness  
8 has not yet arrived in the building so we are going to break  
9 briefly. I don't know how long it will be, hopefully not more  
10 than, say, 10 or 15 minutes. So, we will break.

11 Go back to the jury room and relax. Please, do not  
12 discuss the case.

13 (Continued on next page)

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1 (Jury not present)

2 MS. MIRÓN: Thank you, your Honor.

3 (recess)

4 THE COURT: By the way, before I forget, it is my  
5 practice to give the jury not only a copy of the charge but  
6 also a copy of the indictment. So, if I can get from the  
7 government, at some point, a clean copy of the indictment to  
8 provide to the jury?

9 MR. QUIGLEY: Yes, your Honor. Do you want forfeiture  
10 allegation redacted? All that stuff?

11 THE COURT: Yes, unless the defense has any strong  
12 view. I don't think the forfeiture allegation needs to go to  
13 the jury.

14 (Continued on next page)

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Abdel-Rahman - direct

1 (Jury present)

2 THE COURT: Everyone, please, be seated.

3 Ms. Mirón.

4 MS. MIRÓN: Thank you.

5 The defense calls Marwan Abdel-Rahman.

6 MARWAN ABDEL-RAHMAN,

7 called as a witness by the Defendant,

8 having been duly sworn, testified as follows:

9 THE COURT: Sir, please begin by stating your full  
10 name and spelling your last name for the record.

11 THE WITNESS: Marwan Abdel-Rahman.

12 DIRECT EXAMINATION

13 BY MS. MIRÓN:

14 Q. Good morning.

15 A. Good morning.

16 Q. What is your profession?

17 A. I'm a freelance interpreter/translator.

18 Q. For what languages?

19 A. Several dialects of Arabic and English, of course.

20 Q. And including Egyptian Arabic?

21 A. Egyptian Arabic, Levantine Arabic, Modern-Standard Arabic,  
22 Classic-Standard Arabic.

23 Q. Where did you learn Arabic?

24 A. I was born in an Arabic speaking country and that is Egypt.

25 Q. How far did you go in school in Egypt?

H1N5gam2

Abdel-Rahman - direct

1 A. I received a bachelor degree from Cairo University where  
2 the medium of instruction was always Arabic from elementary  
3 through college.

4 Q. And what about English?

5 A. English, I took English as a foreign language in Egyptian  
6 schools including college. Then, when I arrived as an  
7 immigrant, I enrolled in college as well and received a masters  
8 degree in education as a teacher of English as a second  
9 language.

10 Q. Where did you receive your masters?

11 A. It used to be New Jersey City State College now it is New  
12 Jersey City University.

13 Q. Are you certified to translate Arabic to English and  
14 English to Arabic?

15 A. Yes, I am

16 Q. Where are you currently certified to translate?

17 A. I am approved. That is a more accurate term, approved,  
18 than certified.

19 I am approved by several court systems. I started  
20 with New Jersey Court system, New York Court system,  
21 Immigration Court system, U.S. District Court system.

22 Q. What about in this district?

23 A. This district in particular I started late 2001, and this  
24 district has a certain policy about approving or disapproving  
25 interpreters and it requires a very tough examination.

H1N5gam2

Abdel-Rahman - direct

1 MS. TEKEEI: Objection. Non-responsive.

2 THE COURT: Overruled.

3 Q. Have you worked for both the government and the defense in  
4 different cases?

5 A. I have.

6 Q. Have you been admitted as an expert in other cases?

7 A. I have. I have. In the Southern District and elsewhere.

8 Q. The Southern District of New York?

9 A. Yes.

10 MS. MIRÓN: I would ask that Mr. Abdel-Rahman be  
11 admitted as an expert in Arabic-to-English and  
12 English-to-Arabic translation.

13 MS. TEKEEI: We have no objection, your Honor.

14 THE COURT: Very well. His testimony will be received  
15 as expert testimony.

16 MS. MIRÓN: Thank you.

17 BY MS. MIRÓN:

18 Q. Did you have the opportunity to review certain Facebook  
19 communications and other social media for this case?

20 A. Yes, I did.

21 Q. And to conduct written translations from Arabic to English?

22 A. Yes, I did.

23 Q. I would like to show you a few exhibits. First Defendant's  
24 Exhibit 100-DD-T; did you translate that from Arabic to  
25 English?

H1N5gam2

Abdel-Rahman - direct

1 A. Yes, I did.

2 Q. That's a two-page document.

3 A. Yes.

4 Q. And, how do you recognize that to be the accurate  
5 translation?

6 A. Because my initials appear on the bottom of the page.

7 Q. Is it a fair and accurate copy of the translations that you  
8 performed from Arabic to English that you made?

9 A. Yes, it is.

10 MS. MIRÓN: I would ask that this be admitted as  
11 Defendant's Exhibit 100-DD-T.

12 MS. TEKEEI: Your Honor, we object on hearsay grounds.  
13 May we have a side bar?

14 THE COURT: Yes.

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Abdel-Rahman - direct

1 (At side bar)

2 MS. TEKEEI: Your Honor, there are two pages to this  
3 exhibit and both pages are offering the statements for the  
4 truth of the matter asserted and are therefore hearsay on their  
5 face.

6 The first page shows the defendant speaking with two  
7 individuals about the Luxor Hotel.

8 THE COURT: You have to keep your voice up.

9 MS. TEKEEI: Sure.

10 It shows the defendant speaking with two individuals  
11 about the Luxor Hotel. There is maybe one sentence here that  
12 may not be hearsay because it is a question and that's "Where  
13 is that?" but outside of the other statements that are on this  
14 page it would be totally irrelevant.

15 And the second page also contains hearsay in every  
16 statement again except for potentially the one that's a  
17 question: "What are you doing in Las Vegas?" But the  
18 relevance of that, if there is any, only depends on the prior  
19 statements.

20 THE COURT: What is this?

21 MS. MIRÓN: Your Honor, it is a present sense  
22 impression of where Mr. El-Gammal was when he took these  
23 photographs. It is consistent with his behavior when he was in  
24 New York and took photographs of his sightseeing.

25 THE COURT: And it is relevant because?

H1N5gam2

Abdel-Rahman - direct

1 MS. MIRÓN: Because this is his normal behavior. When  
2 he travels he takes photographs of tourist attractions, he  
3 posts them on Facebook. It is not hearsay because it is a  
4 present sense impression about what he views from his room and  
5 from the sights he visits.

6 MS. TEKEEI: On the first page he says: Luxor is a  
7 hotel in Las Vegas, not Luxor of Egypt. That is a hearsay  
8 statement. And on the second page, one person is surmising or  
9 guessing where the picture is from. Those are not present  
10 sense impressions and they're also totally irrelevant.

11 THE COURT: I was under the impression that this guy  
12 was going to testify about disputed translations that the  
13 government put into evidence. Is he going to do anything along  
14 those lines?

15 MS. MIRÓN: He is going to go over one exhibit but we  
16 with had him translate additional documents which I don't think  
17 the government would have been prepared to stipulate to because  
18 they're new.

19 MR. QUIGLEY: That's why we didn't object pretrial,  
20 your Honor, because we just got them.

21 THE COURT: I'm sorry?

22 MR. QUIGLEY: We just got these a day or two before  
23 trial, that's why we didn't raise an objection earlier.

24 MR. QUIGLEY: There is also no showing they're  
25 contemporaneous, that these are present sense impressions. I

H1N5gam2

Abdel-Rahman - direct

1 mean, he may have been at the hotel at the time but present  
2 sense impression requires a showing that the statement is made  
3 contemporaneous with the thing being described and that is not  
4 present here.

5 THE COURT: That's the proffer that is being made.

6 MS. TEKEEI: Well, if you look at the first page at  
7 5:47 he says Luxor. At 5:59, more than 10 minutes later he  
8 says: Luxor is a hotel in Las Vegas, not Luxor of Egypt. So,  
9 there is significant time difference between those two  
10 statements. And on the second page, similarly, the  
11 communications span the entire day, 1:30, 2:39, 3:04, 8:31,  
12 11:31.

13 MR. HABIB: Your Honor, in our prior filing on present  
14 sense impressions we provided authority based on the advisory  
15 that a time-lag between the perception and statement is  
16 acceptable and we cited cases approving time-lags I think up to  
17 a half hour.

18 THE COURT: I think that's right, I have no problem  
19 with that, necessarily, but clearly "the Luxor is a hotel in  
20 Las Vegas not Egypt," that is hearsay.

21 MR. QUIGLEY: Your Honor, they could -- I mean if they  
22 wanted it on present sense impression piece I am sure there is  
23 metadata to show when these photos were taken. In the Facebook  
24 return it should be, it says date taken. I know it says date  
25 and time taken in the photo so they could show it. I don't

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Abdel-Rahman - direct

1 think they've shown it is a present sense impression without  
2 showing when the photo --

3 MS. TEKEEI: All that they have shown is the image  
4 uploaded date and time but not the date taken.

5 THE COURT: Is it the defense theory that it was taken  
6 at the same time, that the picture and the conversation took  
7 place at the same time?

8 MS. MIRÓN: I don't know precisely the time. I know  
9 that it is not always possible from Facebook records to see  
10 when the picture was taken but it was uploaded at a particular  
11 time and I think that's the present sense impression that he's  
12 conveying.

13 THE COURT: I will allow these.

14 MS. MIRÓN: Thank you.

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Abdel-Rahman - direct

1 (In open court)

2 MS. MIRÓN: I would ask that Defendant's Exhibit  
3 100-DD-T be admitted.

4 MS. TEKEEI: No objection.

5 THE COURT: It will be received.

6 (Defendant's Exhibit 100-DD-T received in evidence)

7 MS. MIRÓN: And published to the jury.

8 THE COURT: Very well.

9 BY MS. MIRÓN:

10 Q. Can you read the translation and the speakers to the jury?

11 A. Attiya: Where's that?

12 Marwa El Gammal: Long live Egypt

13 Gammal: Luxor.

14 Gammal: Luxor is a hotel in Las Vegas, not Luxor of  
15 Egypt.

16 Q. This is an image that was uploaded on June 6, 2014; is that  
17 right?

18 A. Yes.

19 Q. Okay. On the next page of that same exhibit could you  
20 read -- this image was uploaded on June 5th, 2014, right?

21 A. Right.

22 Q. Could you just read the conversation and the speakers?

23 Waleed Naazii. This picture is probably from the City  
24 of Hollywood or the City of Los Angeles. I mean California  
25 anyway.

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Abdel-Rahman - direct

1                   Gammal: Las Vegas. This picture is from my room.

2                   Ehab el Gammal: Ha ha ha ha. What are you doing in  
3 Las Vegas?

4                   Hint bag: The idols!!!

5 Q. You can put that aside. Let me show you what is in  
6 evidence -- well, let me show you Defendant's Exhibit 120-A-T.  
7 Is that a fair and accurate copy of the translation you did and  
8 reviewed in Defendant's Exhibit 100-A T?

9 A. Yes, did and reviewed. I did it from scratch. Did and  
10 reviewed.

11 Q. You approved some translations and performed your own?

12 A. Correct.

13                   MS. MIRÓN: I would ask that this exhibit be admitted.

14                   MS. TEKEEI: No objection, your Honor.

15                   MS. MIRÓN: Okay, and published.

16                   THE COURT: That exhibit will be received and  
17 published.

18                   MS. MIRÓN: Thank you.

19                   (Defendant's Exhibit 120-A-T received in evidence)

20 BY MS. MIRÓN:

21 Q. And this, to be clear, contains additions and revisions to  
22 Government Exhibit 120-A-T; is that right?

23 A. Yes.

24 Q. Could you turn to page 25 and highlight the first line?

25                   What change did you make about this translation?

H1N5gam2

Abdel-Rahman - direct

1 A. The original translation said:

2 Gammal, I am afraid of going to Turkey, what do you  
3 think?

4 I added the word "directly." Afraid to go directly to  
5 Turkey.

6 Q. Why did you add the word "directly"?

7 A. Because there is an Arabic word that was somehow missed by  
8 the translator which means directly very clearly. No doubt.  
9 No doubt in my mind.

10 Q. What is that word?

11 A. That word in Arabic is wsh.

12 Q. Can you tell us more or less where it is?

13 A. It is a two letter word to the far right of the second  
14 line.

15 Q. Okay. So the accurate translation is: Gammal, I am afraid  
16 to go directly to Turkey. What do you think?

17 A. Yes.

18 Q. Please focus on page 53 and highlight the line at 18:56:50.

19 Your translation is slightly different from the  
20 original, right?

21 A. I believe the original translation was don't you ever, ever  
22 communicate with him.

23 Q. And what is your understanding of the Arabic to English  
24 translation?

25 A. My understanding was the translation was meant to be in

H1N5gam2

Abdel-Rahman - direct

1 writing so don't you ever write him.

2 Q. And then page 51, the original, if you recall, was because  
3 I don't want him to think strange thoughts. You have changed  
4 that, right?

5 A. Right.

6 Q. What is your understanding of the meaning of the Arabic?

7 A. Because I don't want him to think something funny.

8 Q. Okay.

9 Let me focus your attention to page 4 of this document  
10 sorry, page 20 of this document -- oh, no, page 4 for now.  
11 There is a reference to a CV, right?

12 A. Yes.

13 Q. Let me show you what's marked as Defendant's Exhibit 400.  
14 Is that an accurate copy of the translation that you did on  
15 that exhibit?

16 A. Yes, it is.

17 MS. MIRÓN: I ask that this be admitted.

18 THE COURT: Any objection?

19 MS. TEKEEI: One moment, your Honor?

20 THE COURT: Yes.

21 (Counsel conferring).

22 MS. TEKEEI: Your Honor, one brief voir dire question?

23 THE COURT: Sure.

24 BY MS. TEKEEI:

25 Q. Is that exhibit actually the attachment?

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Abdel-Rahman - direct

1 A. This exhibit.

2 Q. That's -- I'm sorry he -- that's depicted in the Facebook  
3 communication?

4 A. This is not the Facebook communication.

5 Q. Right. I'm sorry, let me be clear.

6 Looking up at the page where it says 11/7/2013 and  
7 there is an attachment there?

8 A. I did not deal with that. I dealt with the actual printout  
9 of the resume as sent by Attiya.

10 MS. MIRÓN: I would ask that this be admitted, subject  
11 to connection.

12 MS. TEKEEI: We have no objection as to relevance,  
13 only as to the authentication, your Honor.

14 THE COURT: It will be admitted subject to connection.

15 (Defendant's Exhibit 400 received in evidence)

16 BY MS. MIRÓN:

17 Q. And publish to the jury page 1.

18 What is the name on the top of this CV?

19 A. Attiya Mohammed Aboualala.

20 Q. Would you highlight it for the jury?

21 And could you read the media experience listed, just  
22 the first couple of lines?

23 A. MPZ Corporation, specialized in marketing documentary  
24 materials, which is based in London, from February 2011 to  
25 August 2011.

H1N5gam2

Abdel-Rahman - direct

1 Q. Okay.

2 A. Alhiwar Channel, co-preparation and managing the Egyptian  
3 party of Awraq Masriya (Egyptian paper) TV program since 2200  
4 8.

5 And I believe there is a typo.

6 Q. Okay. Let me point your attention to the second to last  
7 indication on that same page beginning "observation."

8 A. Observation of the incidents of the Egyptian revolution and  
9 authenticating some of them since its commencement. Material  
10 is on my channel at YouTube.

11 Q. And then the third page, the third page, third line from  
12 the top?

13 A. Wait.

14 MR. QUIGLEY: Your Honor, may we approach?

15 THE COURT: Yes.

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Abdel-Rahman - direct

1 (At side bar)

2 THE COURT: Isn't the exhibit that I admitted subject  
3 to connection?

4 MR. QUIGLEY: Right, and we had a prior discussion  
5 about this your Honor, I think last week, where you agreed  
6 there was significant amount of hearsay and we agreed with  
7 defense to put up certain redactions. They published a  
8 completely unredacted version to the jury.

9 MS. MIRÓN: Your Honor, I did not understand that our  
10 tech person didn't have the most recent redaction. We won't  
11 publish it any further.

12 THE COURT: The sections to which I directed the jury,  
13 were they in the unredacted?

14 MR. QUIGLEY: Media experience is fine. I think when  
15 she was going through pages though --

16 MR. HABIB: Your Honor, I think what happened is our  
17 litigation support person put up the wrong file by mistake. We  
18 have the wrong file.

19 MS. MIRÓN: I am going to move on anyway.

20 THE COURT: I just want to make sure that the items  
21 that were highlighted that you directed his attention to were  
22 items that I determined could come in.

23 MS. TEKEEI: Yes.

24 MR. QUIGLEY: Yes.

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Abdel-Rahman - direct

1 (In open court)

2 BY MS. MIRÓN:

3 Q. Okay. I am going to move on back to Defendant's Exhibit  
4 120-A-T, page 20, and this is a communication from Attiya  
5 saying take a look and tell me your opinion; is that right?

6 A. Yes.

7 Q. And attached as a reference is resume?

8 A. Yes.

9 Q. On page 34 you have added "some communication."

10 (Continued on next page)

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Abdel-Rahman - direct

1 Q. Let's start at page 33, and just read the entire document.

2 A. "Attiya: May God be with us. I am traveling.

3 "Gammal: Good. Where to? Iran or Daesh?

4 "Attiya: Hahaha. Turkey.

5 "Gammal: You are too wimpy to be Daesh.

6 Congratulations."

7 Q. You added, you agree it is accurate to add those S's to  
8 "congratulations"?

9 A. Well, you know, the Arabic word was "*mabrouk*" and Gammal  
10 wrote it with several vowels, O-O-O-O-O, to indicate emphasis.  
11 And the usual way for translators is to repeat a little in the  
12 word in the Arabic language to give the same effect.

13 Q. Keep reading.

14 A. "Congratulations. I'm coming to visit you, man.

15 "Gammal: It's a must.

16 "Attiya: Man, where is Daesh."

17 Q. You can keep reading.

18 A. "Attiya: Are you coming to Turkey?

19 "Gammal: Hush hush. Yeah. To visit you. And show  
20 you around. We will go to Kusa Dasi.

21 "Attiya: Hahaha. I don't know what is Kusa.

22 "Gammal: A city over there.

23 "Attiya: Okay.

24 "Gammal: Full of bikinis.

25 "Attiya: Hahahaha. I need a wife who can solve this

H1N3GAM3

Abdel-Rahman - direct

1 problem."

2 Q. Thank you. Page 37 you've added one line and can you read  
3 that first line on August 23, 2014 from Attiya?

4 A. "I'm doing my masters tests at the present time and will be  
5 done in one week."

6 Q. Thank you. Page 39. Actually starting on page 38 just  
7 read the conversation beginning 9/11/2014.

8 A. "Attiya: Jimmy.

9 "Gammal: What's new with you. In the country of  
10 Turks.

11 "Attiya: Hahaha. Nice.

12 "Gammal: Praise to Allah.

13 "Attiya: Listen, I might marry a Turkish girl and I  
14 need a favor from Marwa. I want her to recommend me to her  
15 parents.

16 "Gammal: Okay. I think she can do it.

17 "Attiya: Hahaha. You think?

18 "Gammal: She will not get you a bride. You are the  
19 one who must get her.

20 "Attiya: I understand. There is a bride but they  
21 need to inquire about me.

22 "Gammal: Okay.

23 Attiya: Call her. Okay. Two question marks.

24 "Gammal: When you get a bride I will call her.  
25 That's it.

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Abdel-Rahman - cross

1           "Attiya: Yesterday one girl requested photos.

2           "Gammal: Get me the bride and I will call her.

3           "Attiya: Perfect."

4 Q. Then just the first few lines on page 40.

5 A. "Attiya: Why aren't you answering me, Gammal.

6           "Gammal: Great. Very good. Great narrator voice."

7 Then there is a sticker.

8           "Attiya: I am saddened because of you."

9 Q. You can put that aside. Just going to show you two  
10 additional defense exhibits. Those are Defense Exhibits 404  
11 and 402-T. Do you recognize those?

12 A. Yes, I do.

13 Q. As fair and accurate translations?

14 A. Yes.

15 Q. At this time we're not asking they be admitted but we want  
16 to confirm that is your signature on the document.

17 A. It is.

18           MS. MIRON: Just one moment. Nothing further. Thank  
19 you.

20           THE COURT: Cross-examination?

21           THE WITNESS: You're done with me?

22           MS. MIRON: You're going to be crossed.

23           THE COURT: Not so fast.

24 CROSS-EXAMINATION

25 BY MS. TEKEEI:

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Abdel-Rahman - cross

1 Q. Good morning.

2 A. Good morning.

3 Q. Just a few questions. Ms. Miron covered with you Exhibit  
4 120-A-T just now, correct?

5 A. Correct.

6 Q. That exhibit is approximately 50 -- excuse me. Not  
7 approximately. Is exactly 57 pages long.

8 A. I don't remember, but that seems about right.

9 Q. Okay. It's a long document, is that right?

10 A. It is.

11 Q. The changes that you have went over with Ms. Miron right  
12 now, in your direct testimony, those were the only changes that  
13 you had to 120-A-T, to Government Exhibit 120-A-T?

14 A. I cannot confirm that. I have to look through the entire  
15 document and tell if you there were additional changes that I  
16 make. And there could be changes that I do not remember that I  
17 made. You have to keep that in mind as well.

18 Q. Of course. The ones that she went over with you, those are  
19 the ones that are important to convey, is that correct?

20 MS. MIRON: Objection.

21 A. I have no idea what's important.

22 MS. TEKEEI: One moment, your Honor.

23 Q. As you sit here today, you're not aware of any other  
24 changes, other than the ones Ms. Miron reviewed with you?

25 A. I am aware of many other changes that I made. Not

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1 necessarily in that particular document. But I have made many,  
2 many other changes.

3 Q. As to that particular document, 120-A-T, you are not  
4 sitting here today aware of any other changes that you made  
5 that she did not go over with you?

6 MS. MIRON: Objection. Asked and answered.

7 THE COURT: Overruled.

8 A. I cannot confirm that these are the only changes or they  
9 are not the only changes. I mean, I was just given the  
10 document, asked a few questions about it, I answered the  
11 questions to the best of my ability, but I cannot confirm that  
12 these were the only changes.

13 MS. TEKEEI: Thank you sir.

14 MS. MIRON: Just one moment, your Honor. Nothing  
15 further.

16 THE COURT: Any redirect?

17 MS. MIRON: No, your Honor.

18 THE COURT: Sir, you may step down.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused)

21 THE COURT: Does the defense have another witness?

22 MS. SHROFF: Not at this time, your Honor.

23 THE COURT: I'm sorry?

24 MS. MIRON: Not at this moment.

25 THE COURT: Okay. So let's talk.

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1 (At the sidebar)

2 THE COURT: I take it your next witness is --

3 MS. SHROFF: Mr. Osman. The attorney is here. She  
4 stepped in. Her only question to me was whether or not she  
5 could talk with the CJA on duty. I didn't know how to answer  
6 so I just told her to have a seat.

7 THE COURT: What should I tell the jury?

8 MS. MIRON: Early lunch and come back at 1:30?

9 MS. SHROFF: Your Honor, if the Court thinks you're  
10 going to resolve the issue by 1:30, let's make sure.

11 THE COURT: We can tell them to be back by 1:30.

12 MS. SHROFF: I understand the CJA on duty, we made a  
13 call to find out who it is. It is Lori Cohen. We have not  
14 spoken to Ms. Cohen. We're just letting the Court know who it  
15 is. Ms. Manley is here.

16 THE COURT: She is a criminal defense lawyer, is she  
17 not?

18 MS. SHROFF: Ms. Manley?

19 THE COURT: Yes.

20 MS. MIRON: We don't think she's admitted.

21 MS. SHROFF: She's not admitted to this district. She  
22 sent you an e-mail last night.

23 THE COURT: Right, but I can --

24 MS. SHROFF: You can do whatever you want.

25 THE COURT: So I'll tell the jury come back at 1:30.

H1N3GAM3

1 (In open court)

2 THE COURT: Ladies and gentlemen, Mark Twain once said  
3 "I'm sorry this letter is so long. I didn't have time to make  
4 it shorter." The point of me telling you that is sometimes we  
5 have to do some legal work in order to make sure that the  
6 evidence is presented in front of you in the most efficient  
7 way. This is one of those moments.

8 So what we're going to do is break now for lunch and  
9 I'm going to give you some extra time. So please be in the  
10 jury room no later than 1:30, and we should be able to get  
11 going then. Okay. Until then do not discuss the case, do not  
12 read any news about the case, and do not do any research

13 (Jury excused)

14 THE COURT: Is Ms. Manley available?

15 MS. SHROFF: Your Honor, I think she's right outside.

16 THE COURT: Okay.

17 (Pause)

18 MS. SHROFF: Your Honor present in the courtroom now  
19 is defense witness Khalafalla Osman and his counsel Kathy  
20 Manley.

21 THE COURT: Good morning to you both. Mr. Osman,  
22 there may be a request to have you wait just outside while we  
23 discuss certain legal matters. If you don't mind, just stay  
24 right outside the door so we can get you if we need you.

25 THE WITNESS: Okay. Thank you.

H1N3GAM3

1 MS. MANLEY: Good morning, your Honor.

2 THE COURT: There is a podium over there if you want  
3 to speak into a microphone, and I would request you do that  
4 because the acoustics in this room are pretty awful.

5 Good morning, Ms. Manley. I understand that you are  
6 concerned that you are not admitted to the bar of the Southern  
7 District of New York.

8 MS. MANLEY: That is correct. I'm admitted in the  
9 Northern District, but not in this district. And I understood  
10 that there was a CJA attorney that could be available to work  
11 with me. I don't know if that --

12 THE COURT: We've made a request that the CJA attorney  
13 be present, but let me just ask, are you in good standing in  
14 the Northern District of New York?

15 MS. MANLEY: Yes.

16 THE COURT: And in the State of New York?

17 MS. MANLEY: Yes.

18 THE COURT: In order to move along as efficiently as  
19 we possibly, I'll allow you to appear for purposes of this  
20 particular issue.

21 Now, as I understand it, you have a concern that if  
22 called as a witness, your client, Mr. Osman, may be required to  
23 invoke his Fifth Amendment right against self-incrimination.  
24 Is that correct?

25 MS. MANLEY: Yes. Out of caution I think that it

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would be in his best interests if asked certain questions to invoke his Fifth Amendment right. And if there is going to be an inquiry as to the basis for that, I would prefer there be an in camera proceeding.

THE COURT: Okay. There is going to be an inquiry with respect to that. It is very much contested. Are you in a position to state just generally what the basis of that invocation would be?

MS. MANLEY: Well, as in my letter -- did you see my letter?

THE COURT: I did.

MS. MANLEY: Okay. So there's just a concern that there's one or two possible inconsistencies with -- there is a couple of statements that Mr. Osman made to federal agents and once the prosecutors were there and I was also there.

And for example, there was something that the prosecutors claimed that he said in the first meeting where I was not there in 2015. And I am afraid that if he -- you know, he says he didn't say that. So if he testified and was asked that question, he would say he didn't say that, and then there can be a problem.

So I understand that the Fifth Amendment doesn't protect you against perjury, but if there is an inconsistency from something he said before, I'm concerned about the possibility of a false statement prosecution.

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1                 Now, I don't know how much of a risk that is. I  
2 haven't gotten any assurances. Originally the prosecution said  
3 that they were not looking to prosecute him, that they were  
4 interested in talking to him as a possible witness, and that  
5 they did not want to call him. I thought we were done. Then  
6 later I met with the defense, many months later, I felt like it  
7 was only fair I met with the prosecution, we met with the  
8 defense, and now I'm not sure what the position is with the  
9 prosecution with the defense wishing to call my client. So,  
10 I'm hoping that there is no desire on their part to prosecute  
11 him. But, you know, there's -- I don't know.

12                 THE COURT: Very well. So, why don't we do this. Why  
13 don't we meet ex parte and what I will do is I will have the  
14 defense team meet with us at least for the initial part of that  
15 ex parte meeting. Okay?

16                 MS. MANLEY: Okay.

17                 THE COURT: Let's get Mr. Osman and we'll meet in the  
18 robing room.

19                 (Pages 1458-1469 SEALED)

20                 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Based on the representations made ex  
3 parte, and after Ms. Manley and Ms. Cohen who is the CJA lawyer  
4 on duty, after they conferred, they determined that Mr. Osman  
5 would not be invoking his privilege against self-incrimination  
6 and therefore will be testifying at 1:30.

7 Unless there is anything more for me, we'll see you at  
8 1:30.

9 Before we all run off, who is up after this?

10 MS. SHROFF: We may rest.

11 MS. MIRON: You're speaking about today?

12 THE COURT: Yes.

13 MS. SHROFF: You were asking about today?

14 THE COURT: Yes.

15 MS. SHROFF: I'm sorry.

16 MS. MIRON: Nobody else is available today. We were  
17 thinking the charge conference could occur around 2:30 or 3.

18 THE COURT: We'll do it then.

19 It appears it wasn't a napkin. You still want the  
20 original?

21 MS. SHROFF: We were trying to introduce it into  
22 evidence, that's why we asked for the original. If the  
23 government is willing to stipulate that comes in in lieu of the  
24 original, that is up to them. I think pursuant to Rule 16 it  
25 is something we're allowed to have.

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1                   MR. QUIGLEY: We had the agents look into it. The  
2 original is in Albany. In the FBI office in Albany.

3                   THE COURT: Okay.

4                   MR. QUIGLEY: Obviously we'll reserve any objection to  
5 that coming into evidence even as a copy.

6                   (Luncheon recess)

7                   (Continued on next page)

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## 1 A F T E R N O O N S E S S I O N

2 1:30 p.m.

3 (Trial resumed; jury not present)

4 THE COURT: Mr. Quigley?

5 MR. QUIGLEY: Briefly, before the testimony of  
6 Mr. Osman, I wanted to flag an issue with the Court based on  
7 3500 we received for him which was one piece before the break.8 Ms. Shroff's representation about wanting to introduce  
9 potentially the consent to his phone that he signed, we think  
10 it would be -- I mean, we have seen some signals that the  
11 defense may want to use this witness to go into topics that we  
12 think are clearly irrelevant such as the FBI's impression of  
13 him, the possibility that he was once considered as a potential  
14 government witness at some point, suggesting that the  
15 government wouldn't call him if the defense would. Also, he is  
16 not a percipient witness to know how, for lack of a better  
17 word, special he is in the eyes of the government. The  
18 government interviewed dozens of people in this case both  
19 associates of Mr. El- Goarany, and Mr. El-Gammal from Arizona.  
20 For this witness to say, oh, they called me X times and leave  
21 the jury with the impression that that was somehow out of the  
22 ordinary would be completely inappropriate and, likewise, to go  
23 into the circumstances of the consent that he signed to have  
24 his Facebook message copied from his phone, is really far  
25 afield from issues here, particularly given that this witness,

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1 as far as we know, never interacted with the defendant.

2 THE COURT: I saw Ms. Shroff shaking her head.

3 Ms. Shroff?

4 MS. SHROFF: I was not planning to ask that line of  
5 questioning but, you know, there is always that word objection  
6 and I'm sure Mr. Quigley knows how to use it, so.

7 THE COURT: Okay.

8 MS. SHROFF: I have no -- well, you'll see.

9 THE COURT: Where is the witness?

10 MS. SHROFF: He is outside, your Honor. May I go  
11 fetch him?

12 THE COURT: Yes, why don't you, and let's get the  
13 jury. The jury is all here.

14 MS. SHROFF: He might have been taking a moment to  
15 pray with his father, I think it is that time, so I think they  
16 might just be one more minute. That's it.

17 THE COURT: Forgive the ignorant question, but how  
18 long does that take?

19 MS. SHROFF: Very few minutes. It is not a long  
20 prayer.

21 (pause)

22 THE COURT: Okay. Let's get the jury.

23 (Continued on next page)

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Osman - direct

1 (Jury present)

2 THE COURT: Everyone, please be seated.

3 Briefly, before we get started, there is a mistake  
4 that I made that I need to correct on the record, ladies and  
5 gentlemen.

6 Before we broke I attributed a particular quote to  
7 Mark Twain. Apparently I was wrong, that was first apparently  
8 uttered by the French mathematician Blaise Pascal.

9 So, with that, does the defense have a next witness?

10 MS. SHROFF: Yes, your Honor. The defendant calls  
11 Mr. Khalafalla Osman.

12 THE COURT: Please step up into the witness stand,  
13 watch your step and please, remain standing.

14 KHALAFALLA MOHAMMED OSMAN,

15 called as a witness by the Defendant,

16 having been duly sworn, testified as follows:

17 THE COURT: Please begin, Mr. Osman by stating your  
18 full name and spelling your last name for the record.

19 THE WITNESS: My name is Khalafalla Mohammed Osman.

20 THE COURT: Ms. Shroff?

21 MS. SHROFF: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. SHROFF:

24 Q. Good afternoon, Mr. Osman.

25 A. Good afternoon.

H1N5gam4

Osman - direct

1 Q. How did you know Samy El- Goarany?

2 A. I have known him originally on Facebook through a mutual  
3 friend of ours; he was sharing an article regarding the Newtown  
4 school catastrophe and it was discussing, I guess, the  
5 selective outrage of children dying and therefore I -- Samy was  
6 really vocal arguing that case of selective outrage while I was  
7 trying to discuss a more spiritual approach of saying that that  
8 is not -- that's not Islamic to talk about, and I provided  
9 evidence.

10 And so, that was how the friendship originally  
11 started.

12 Q. And, could you tell the jury what year that was?

13 A. That was the year 2013.

14 Q. And who was the mutual friend?

15 A. The mutual friend was Ali Malek.

16 Q. Do you recall how you then became -- well, let me rephrase.  
17 Did you then become friends with Mr. Samy El- Goarany?

18 A. Yes.

19 Q. And could you just tell us, briefly, how that came about?

20 A. After providing more, you know, Islamic evidence and we  
21 spoke privately, he came to the understanding that I was  
22 correct, that he shouldn't have said what he said, and from  
23 there we developed our friendship.

24 Q. Now, when you said you spoke privately, did you mean  
25 privately in person or privately online?

H1N5gam4

Osman - direct

1 A. Online.

2 Q. And, were there other topics that you and Samy El- Goarany  
3 had in common?

4 A. Yes.

5 Q. And could you tell us, please, what those topics were?

6 A. Hip hop, sports, and Middle Eastern politics, and Islam.

7 Q. Did you and Mr. El- Goarany discuss Egypt?

8 A. Yes.

9 Q. And did you and Mr. El- Goarany discuss Abdel Fattah  
10 el-Sisi?

11 A. Yes.

12 Q. And did Mr. El- Goarany make you aware of his views on  
13 Sisi?

14 A. Yes.

15 Q. And what were his views?

16 A. He was against President Sisi.

17 Q. And did he explain to you why?

18 A. Because he was in agreement with the democratically-elected  
19 president Mohammed Morsi before.

20 Q. And by "he" you mean Samy, correct?

21 A. Yes.

22 Q. And did you also discuss other topics with Mr. El- Goarany  
23 including the Muslim Brotherhood?

24 A. Yes.

25 Q. And did you also discuss Hamas?

H1N5gam4

Osman - direct

1 A. Yes.

2 Q. And did you also discuss Israel and Palestine?

3 A. Yes.

4 Q. Did you also talk about Turkey and Syria?

5 A. Yes.

6 Q. Did you also talk about -- and I got this wrong -- Lebron  
7 James and basketball?

8 A. Yes.

9 Q. And did you also talk about school?

10 A. Yes, we did.

11 Q. And at that time could you tell the jury where you were in  
12 school? And by that time I mean late 2013-2014 time period.

13 A. I was a freshman at the State University at Albany.

14 Q. And try and keep your voice up, okay?

15 A. Okay.

16 Q. What were you studying, sir?

17 A. I was studying political science and business  
18 administration.

19 Q. And what was Samy doing at that time, if you know?

20 A. I don't remember.

21 Q. Now, when you were in an online friendship with Samy, was  
22 there somebody else named Nico that was also part of that  
23 group?

24 A. Yes.

25 Q. And what did the three of you have in common?

H1N5gam4

Osman - direct

1 A. We worked on music together.

2 Q. And do you recall a discussion between Samy, yourself, and  
3 Nico where Samy advised you not to use religion to pacify  
4 Muslims?

5 A. Yes.

6 Q. Could you tell us what that was about?

7 A. Basically, Samy believed that my religious views were  
8 pacifying his activist views in the sense that sometimes he  
9 would be a little too -- I guess at times he would take it too  
10 far and so I would say, well, that's not Islamic, therefore you  
11 shouldn't think that way if you claim to be a Muslim.

12 Q. Now, Mr. Osman, could you tell the jury, where did you  
13 study Islam?

14 A. I studied Islam with my local teachers at the mosque and I  
15 also went to a newer Islamic school which is from preschool to  
16 eighth grade, so yes.

17 Q. And do you speak Arabic?

18 A. Yes.

19 Q. And are you a native Arabic speaker?

20 A. It's my second language.

21 Q. When you said you went to your local school? Is that what  
22 you said?

23 A. I went to my local scholars.

24 Q. And by local you mean in Albany, correct?

25 A. Yes.

H1N5gam4

Osman - direct

1 Q. And did Samy El- Goarany speak Arabic?

2 A. No.

3 Q. Now, throughout the time of 2013-14 did Mr. El- Goarany ask  
4 you, at times, to translate articles that were in Arabic?

5 A. Yes.

6 Q. And did you guys or did you two exchange articles on these  
7 topics that we have discussed before?

8 A. Yes.

9 Q. And is it fair to say you also exchanged videos, correct?

10 A. Yes.

11 Q. Now, did there come a time when you and Mr. Samy  
12 El- Goarany met in person?

13 A. Yes.

14 Q. Could you tell us when that was?

15 A. The first time we met in person was in New York City in  
16 2013, and it was after a conference that I attended in North  
17 Carolina. So, it was a long trip -- it was a long waiting  
18 time so he came to me after I told him I was in the city and  
19 that was the first time we met.

20 Q. And you were waiting at where?

21 A. I was waiting at Penn station.

22 Q. And Mr. El- Goarany met you at the Penn station?

23 A. Yes.

24 Q. And do you recall what, if anything, you guys talked about?

25 A. Yeah; we spoke about basketball and hip hop.

H1N5gam4

Osman - direct

1 Q. Now, after that meeting you continued to have an online  
2 friendship with Mr. El- Goarany, correct?

3 A. Yes.

4 Q. And what platforms did you speak to him on? Do you  
5 understand my question?

6 A. Yes.

7 Facebook and text messages, and phone calls, and  
8 Google hangout.

9 Q. Could you tell me, please, what was your phone number at  
10 that time?

11 A. My phone number at that time was 518-779-0324.

12 Q. And did you also have a home number at that time?

13 A. Yes.

14 Q. And what was that?

15 A. 518-426-3159.

16 Q. And would Samy El- Goarany call you on both of those  
17 numbers?

18 A. No. Only my cell phone.

19 Q. Now, did you become aware that Samy El- Goarany was also  
20 active on Twitter?

21 A. Yes.

22 Q. And could you tell the jury your impression of his use of  
23 that app or platform or whatever it's called?

24 A. Yes. He used Twitter to discuss his political views,  
25 mostly, and he was regarded very influential on Twitter, a lot

H1N5gam4

Osman - direct

1 of people followed him and cared of his opinion.

2 Q. And was Samy shy about voicing his opinion on Twitter?

3 A. Absolutely not.

4 Q. Now, was Samy also on a platform called electronic  
5 Intafada?

6 A. Only for reading, but yes.

7 Q. And how about Angry Arab?

8 A. Yes.

9 Q. And could you tell the jury what those two platforms are?

10 A. Those are just online publications where they discuss  
11 anti-Zionist views. So, they discuss basically everything in  
12 regards to Palestine and they were a pro-Palestinian source of  
13 news.

14 Q. Is it fair to say that Mr. El- Goarany was pro-Palestine?

15 A. Yes.

16 Q. Anti-Israel?

17 A. Yes.

18 Q. Anti-Zionist?

19 A. Yes.

20 Q. Did there come a time that you recall that Samy started to  
21 discuss the Islamic State or the Islamic State of Iraq and  
22 Syria with you?

23 A. Yes, he was.

24 Q. Do you recall when the first of those discussions was or --  
25 do you recall?

H1N5gam4

Osman - direct

1 A. I don't recall the exact time.

2 Q. Do you have a general idea when that was?

3 A. All I remember is it was during the -- like, we were  
4 discussing the Syrian conflict.

5 Q. And do you remember what Mr. El- Goarany's views were about  
6 ISIS?

7 A. He disagreed with their methodology however he, I guess,  
8 seemed to admire their state of being kind of like a rogue  
9 organization like they didn't -- he was of the impression that  
10 they weren't funded by any powers -- world powers or anything  
11 and that they were just doing what they were doing on their  
12 own.

13 Q. Did Mr. El- Goarany agree with their violent methods?

14 A. No.

15 Q. Did he tell you specifically that he did not agree with  
16 their violent methods?

17 A. Yes, he did not agree.

18 Q. I'm sorry. Could you keep your voice up, sir?

19 A. Yes. Sorry.

20 Q. And did there come a time, as you recall, in 2014, when he  
21 continued to research them at the same time condemn them to  
22 you?

23 A. Yes.

24 Q. Now, during this time frame did you and he discuss ISIS?

25 A. Yes.

H1N5gam4

Osman - direct

1 Q. And did you also send each other and exchange articles and  
2 videos about the organization?

3 A. Yes, we have.

4 Q. And did you talk about it also over Google hangout?

5 A. Yes.

6 Q. Now, did there come a time when Samy introduced a code word  
7 for ISIS to you?

8 A. Yes.

9 Q. And what was that?

10 A. It was groundhogs.

11 Q. Groundhogs?

12 A. Yes.

13 Q. Did he tell you why he chose that specific word?

14 A. The reason he referred to them as that is because they came  
15 out of nowhere, like they popped out of a hole in the Syrian  
16 conflict.

17 Q. Kind of like the groundhog?

18 A. Yes.

19 Q. Now, directing your attention to November of 2014; do you  
20 recall that time period?

21 A. November 2014?

22 Q. Yes.

23 A. Yes.

24 Q. Now, do you recall during that time period meeting with  
25 Samy El- Goarany?

H1N5gam4

Osman - direct

1 A. Yes, I do.

2 Q. And where was it that you met Samy El- Goarany?

3 A. At the University at Albany.

4 Q. And you were a student at Albany at that time, correct?

5 A. Yes, I was.

6 Q. And were you the chairperson or the head of the Muslim  
7 student association there?

8 A. Yes. I was the president.

9 Q. You were president.

10 A. Uh-huh.

11 Q. And was Samy aware of that?

12 A. Yes.

13 Q. And was there a specific event that Samy showed up to?

14 A. Yes. It was called Chai Tea Night.

15 Q. Say that again?

16 A. It was called Chai Night Tea.

17 Q. Chai Night and then tea?

18 A. Yes.

19 Q. Had you invited Samy to this event?

20 A. No, I did not.

21 Q. And did Samy just show up on his own?

22 A. Yes, he has -- yes, he did.

23 Q. Were you surprised to see him there?

24 A. Yes, I was.

25 Q. Could you tell the jury what happened after you spotted him

H1N5gam4

Osman - direct

1 at the event?

2 A. So, I saw Samy and he was my -- he was my best friend so I  
3 was very excited to see him, very surprised as well. And as  
4 soon as the event ended, he gave me a ride home. During the  
5 ride home he told me to turn off my phone, and after that he  
6 told me that he was not going on his internship anymore because  
7 he told a group of us friends that he was going on -- he had an  
8 internship for, I guess, something in the computer science  
9 field. And so, he told me that he wasn't going to have an  
10 internship but rather that he was going to do humanitarian aid  
11 in Turkey helping Syrians cross the border to Turkey.

12 Q. Now let me take you back for a second, Mr. Osman.

13 A. Yes.

14 Q. Were you expecting Samy El- Goarany to give you a ride on  
15 that night?

16 A. No.

17 Q. Who were you planning to get home with?

18 A. My parents.

19 Q. And was it your suggestion that Samy El- Goarany give you a  
20 ride? Or was it his?

21 A. It was his.

22 Q. And you thought nothing of it, right; as you said, he was  
23 your best friend and he offered you a ride and you took the  
24 ride, correct?

25 A. Yes.

H1N5gam4

Osman - direct

1 Q. And it was Samy who drove you to your home or at least  
2 toward your home, correct?

3 A. Yes.

4 Q. And Samy asked you to turn off your phone; is that correct?

5 A. This is correct.

6 Q. And did you in fact do as Samy asked and turn off your  
7 phone?

8 A. Yes.

9 Q. Now, let's just talk about that for a minute and step  
10 forward about that one statement. Did you at any point not  
11 tell the FBI the truth about turning off that phone?

12 A. Yes.

13 Q. And when was that that you did not tell them the truth?

14 A. During the second meeting.

15 Q. Your second meeting with whom, sir?

16 A. With the FBI.

17 Q. And during your first meeting with the FBI, did you tell  
18 them the truth?

19 A. I don't recall.

20 Q. And who was present for the first meeting with the FBI?

21 A. Two agents.

22 Q. And?

23 A. And that's it. No lawyer.

24 Q. You were present, right?

25 A. And myself. Sorry. Yes.

H1N5gam4

Osman - direct

1 Q. So, it was you and two agents of the FBI, correct?

2 A. Yes.

3 Q. At the second meeting who was present; do you recall?

4 A. There were many agents so I don't remember -- or many  
5 people, but I was there and my lawyer was there.

6 Q. Well, why don't we take a look at the prosecutorial table  
7 right here -- actually, let's start at the defense table right  
8 there, over there. Was anybody from that table present for  
9 that meeting?

10 A. No.

11 Q. Was I present? Because I'm not at the table.

12 A. No.

13 Q. Okay.

14 Now let's just start from the corner there; was the  
15 first person who is the female sitting in front of the  
16 computer, was she present?

17 A. I don't think so.

18 Q. Okay. How about the next person?

19 A. Yes.

20 Q. And the record should reflect that would be Assistant  
21 United States Attorney Brendan Quigley.

22 And was the person sitting next to him present?

23 A. Yes.

24 Q. The record should reflect that would be Assistant United  
25 States Attorney Negar Tekeei.

H1N5gam4

Osman - direct

1                   Was the next person present?

2 A. Yes.

3 Q. Okay. And you think Assistant United States Attorney  
4 Andrew DeFilippis was present?

5 A. I don't recall that.

6 Q. And how about the person at the corner, was he present?

7 A. Yes.

8 Q. Special Agent Collie, correct?

9 A. Yes.

10 Q. And that meeting occurred in May of 2016, correct?

11 A. Yes.

12 Q. And you lied to them and you said that -- what was the lie  
13 that you told them?

14 A. I told them that I turned my phone off -- Samy told me to  
15 turn my phone off and I pretended to turn my phone off.

16 Q. And that was a lie?

17 A. Yes.

18 Q. And did you correct the lie?

19 A. Yes, I did.

20 Q. And when did you correct the lie?

21 A. The same -- the same meeting.

22 Q. The same meeting?

23 A. Yes.

24 Q. The lie did not go past the end of that meeting, correct?

25 A. Yes. Correct.

H1N5gam4

Osman - direct

1 Q. And when you corrected the lie, would you tell the jury,  
2 please, how you corrected it and what did you say to them?

3 A. I told them that the one lie that I made was that I told  
4 them that I pretended to turn the phone off but, in actuality,  
5 I followed exactly what Samy told me to do which is turn my  
6 phone off.

7 Q. So now let's go back in time back to the car ride, correct?

8 A. Uh-huh.

9 Q. And during this car ride Samy told you, you testified, that  
10 what he had been telling other people about having an  
11 internship with the computer information systems was not  
12 correct, right?

13 A. Correct.

14 Q. And he told you in fact that he was going to go on a --  
15 what was the word he used?

16 A. Vacation.

17 Q. And did he tell you if he was planning to return from that  
18 vacation?

19 A. No. He did not -- yes, he did not plan on returning.

20 Q. And did he explain to you what he was going to do on that  
21 vacation?

22 A. Yes. He planned on helping Syrian refugees cross the  
23 Turkish border.

24 Q. How did he refer to Turkey by the way when he discussed it  
25 with you on that day?

H1N5gam4

Osman - direct

1 A. On that day he referred to it as Turkey.

2 Q. And what did he say exactly that he was going to do in  
3 Turkey?

4 A. He was going to work with an organization that would help  
5 bring Syrian refugees into Turkey.

6 Q. From where?

7 A. From Syria.

8 Q. Now, did he tell you whether or not -- what kind of an  
9 organization did he describe it as?

10 A. As a humanitarian organization.

11 Q. And did you ask him any follow-up questions about that?

12 A. Yes.

13 Q. And what was the question that you asked him?

14 A. The first question I asked him was is it illegal.

15 Q. And what did he say?

16 A. He said yes.

17 Q. And what was your next question to him?

18 A. I said is it non-violent.

19 Q. And what did Samy El- Goarany say?

20 A. He said yes.

21 Q. So, Samy El- Goarany said that he was going to go do  
22 humanitarian work which was illegal and not violent?

23 A. Yes.

24 Q. And what was your reaction, Mr. Osman, to Samy's  
25 declaration to you?

H1N5gam4

Osman - direct

1 A. I was in shock because he cannot speak Arabic.

2 Q. And did you discuss the wisdom of such a decision with Samy  
3 El- Goarany?

4 A. Yes.

5 Q. And what did you say to him?

6 A. I asked him if he really thought this through, the fact  
7 that he cannot speak any Arabic, the fact that he is now  
8 working with an organization that seemed to be a legitimate one  
9 to cross the border and help Syrian refugees would be a bad  
10 idea for him, would be a dangerous idea for him, and I  
11 mentioned that if he was to be captured, being an American  
12 citizen he would be in great danger. Plus, he can't speak any  
13 Arabic, as I said before. I also mentioned that as an American  
14 citizen he can help Syrian refugees a lot more effectively here  
15 in the United States than to go abroad.

16 Q. And did Samy have a response to this?

17 A. Yes. He said that he put a lot of thought into this. When  
18 I asked him for more detail he just said I can't tell you.

19 Q. And did you also discuss whether or not his parents knew  
20 about this plan of his?

21 A. Yes. I asked him if his parents knew and he said no.

22 Q. Now, obviously the car ride came to an end at some point,  
23 correct?

24 A. Correct.

25 Q. And did Samy accompany you somewhere once he reached your

H1N5gam4

Osman - direct

1 home?

2 A. Yes.

3 Q. Where did he accompany you?

4 A. He accompanied me to my house, inside, where we had some  
5 tea and we -- he wanted to install some encrypted communication  
6 software on my computer and my phone.

7 Q. And did you allow him to do that?

8 A. Yes.

9 Q. And what communication software did he try to install and  
10 where?

11 A. He tried to install Cryptocat on my laptop but it was  
12 unsuccessful. He successfully installed Surespot on my phone  
13 and we tested it out to see if it works.

14 Q. And what happened after that?

15 A. After that we -- I was bidding him farewell outside the  
16 door, we hugged, I told him to think about this, don't do it.  
17 We got a little teary and then he left.

18 Q. Now, did there come a time when you once again heard from  
19 Samy El- Goarany?

20 A. Yes.

21 Q. And do you recall whether he called you or you called him?

22 A. He called me.

23 Q. And what is it that he called you for?

24 MR. QUIGLEY: Objection.

25 A. He called me to inform me that he changed his mind on this

H1N5gam4

Osman - direct

1 vacation of his.

2 Q. So he called to say he had changed his mind?

3 A. Yes.

4 Q. And did he tell you that -- did he tell you what the reason  
5 was that he had changed his mind?

6 A. Yes.

7 Q. And what was the reason?

8 A. The reason was the words that I told him, he said that they  
9 got to him and that he realized that he was wrong and he wanted  
10 to stay with his friends and his family.

11 Q. And after that, did your friendship with him continue as  
12 before?

13 A. Yes.

14 Q. And, did you continue to talk to him on the same social  
15 media that you had talked to him before?

16 A. Yes.

17 Q. And did you continue to speak to him on Google chat?

18 A. Yes.

19 Q. And did you continue to hang out with him when the occasion  
20 arose? I mean, did you see each other?

21 A. In person?

22 Q. Yes.

23 A. I don't believe so after that.

24 Q. Now, when was the next time that you heard from  
25 Mr. El- Goarany?

H1N5gam4

Osman - direct

1 A. The next time I heard I do not remember the exact timing.

2 Q. Do you generally recall the month and the year?

3 A. It was the -- I guess, like, December 2014.

4 Q. And in December of 2014 did you, he, and Nico put together  
5 some kind of song? Is that how you talked about what you  
6 talked about in December?

7 A. Yes.

8 Q. And then, moving forward, do you recall when was the next  
9 time you heard from Samy El- Goarany?

10 A. After we put the song out he completely disappeared for a  
11 few months. I believe the next time I heard from him, I'm not  
12 sure, but I think it was February.

13 Q. Okay.

14 Can I just have one second, your Honor?

15 THE COURT: Yes.

16 (Counsel conferring)

17 BY MS. SHROFF:

18 Q. Just for a moment, Mr. Osman, let me take you back to July  
19 2014. Do you recall we discussed that time period before?

20 A. Yes.

21 Q. And you talked about discussions that you had with  
22 Mr. El- Goarany about many organizations including ISIS,  
23 correct?

24 A. Correct.

25 Q. And you and he talked on Facebook about ISIS, correct?

H1N5gam4

Osman - direct

1 A. Correct.

2 Q. Let me show you what is marked as Defendant's Exhibit  
3 113-SS for a moment.

4 May I approach, your Honor?

5 THE COURT: You may.

6 Q. Do you see that, Mr. Osman?

7 A. Yes.

8 Q. Do you recognize that?

9 A. Yes, I do.

10 Q. What do you recognize that to be?

11 A. A Facebook conversation between me and Samy.

12 MS. SHROFF: Your Honor, the defense would offer  
13 Defendant's Exhibit 113-SS into evidence.

14 MR. QUIGLEY: Objection. Hearsay.

15 MS. SHROFF: Your Honor, may we approach?

16 THE COURT: You may.

17

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25

H1N5gam4

Osman - direct

1 (At side bar)

2 THE COURT: Yes?

3 MR. QUIGLEY: So, your Honor, we think there are a  
4 number of pieces of hearsay in here. First, the third message  
5 down where Samy says that, in response to his question about  
6 the Imam of the Mosul of Masjid said no, that's a lie. That's  
7 a statement of fact.

8 MR. HABIB: We don't need that one, Judge.

9 THE COURT: Okay.

10 MR. QUIGLEY: So the first three I guess are out.

11 Then, *the propaganda is coming*. Again, statement of  
12 fact.

13 On the next page, first page, second page: *I*  
14 *instantly jumped on the anti-Islis bandwagon*.

15 THE COURT: Okay.

16 MR. QUIGLEY: *Right now I am just taking a step back.*  
17 *None of us are there and we don't have the intellectual or*  
18 *experiential capacity to form a solid stance.* A lot of people  
19 *are very quick to Judge and mock.*

20 Then, the third page: *Exactly, my friend.* Right now  
21 *my friend from QI instantly jumped on the anti-ISIS bandwagon.*

22 MR. QUIGLEY: Don't need that one.

23 THE COURT: What is QI?

24 MR. HABIB: QI? My friend from QI? I actually don't  
25 know.

H1N5gam4

Osman - direct

1                   MR. QUIGLEY: Samy at the bottom of the page: I was  
2 finally able to delete that article. Ha ha. Statement of  
3 fact. The rest of that sentence is maybe a thought but the  
4 first part is definitely an assertion of fact.

5                   So, I think based on that, this document contains  
6 numerous pieces of hearsay and shouldn't be admitted.

7                   THE COURT: The whole thing doesn't get admitted but.

8                   Now, I didn't understand you to object to the first  
9 two statements: *Were you asked the question --*

10                  MR. QUIGLEY: I think a question is not a factual  
11 assertion. And then first two are not hearsay.

12                  MR. HABIB: On the first page, Judge, *the propaganda*  
13 *is coming*, by definition cannot be an assertion of fact, it is  
14 a prediction of the future. It is like me saying the wind is  
15 going to get stronger or is going to get stronger this  
16 afternoon. I don't think a prediction about the future is  
17 being offered for its truth, it is being observed to show  
18 Samy's belief about what is going to happen in the future and,  
19 thus, his state of mind.

20                  THE COURT: I will allow that one, propaganda is  
21 coming. Depending on what context it could be a statement of  
22 fact but here it appears to be a prediction about what is going  
23 to happen in the future.

24                  MR. HABIB: On the second page, the two statements: *I*  
25 *instantly jumped on the anti-ISIS wagon without any research,*

H1N5gam4

Osman - direct

1 are not offered for their truth, they're offered to show their  
2 effect on the listener, Mr. El- Goarany, that is  
3 Mr. El- Goarany immediately endorses that belief and talks  
4 about why prudence is the better course and we should take  
5 the -- that's the best stance to have, we should take time to  
6 inform ourselves before we are quick to judge.

7 So, again, we do not care to establish that Mr. Osman  
8 instantly jumped on the anti-ISIS wagon, how much research he  
9 did or didn't do before doing so. What is being offered is  
10 what it prompts Samy to say in response.

11 MR. QUIGLEY: But those are factual assertions also.  
12 *None of us are there and we don't have the intellectual*  
13 *capacity to form a solid stance. So, what they're being used*  
14 *is to show the effects on the listener is itself hearsay.*

15 MR. HABIB: So, again, Judge, we don't -- we can take  
16 out "none of us are there." *We don't have the intellectual or*  
17 *experience shall capacity to form a solid stance, again, this*  
18 *is an expression of Samy's then existing state of mind. He is*  
19 *describing indecision, uncertainty, ambivalence, and he is*  
20 *endorsing the suggestion by Mr. Osman that a wait and see*  
21 *approach is proper. And he is not offering it to prove the*  
22 *metaphysical assertion that these people do or don't have the*  
23 *intellectual ability or the life experience to opine about*  
24 *ISIS, it is that they are not opining about ISIS.*

25 THE COURT: What is IDK ISH?

H1N5gam4

Osman - direct

1 MR. QUIGLEY: I don't know shit.

2 MR. HABIB: I don't know shit.

3 THE COURT: Really?

4 MR. HABIB: That's what the young kids tell me, Judge.

5 THE COURT: Okay. Then on the next page?

6 MR. HABIB: I think we agree *my friend from QI*, we can  
7 loose that one.

8 THE COURT: And then --

9 MR. HABIB: We can lose: *I was finally able to delete*  
10 *the article.*

11 THE COURT: The whole thing?

12 MR. HABIB: I think Mr. Quigley only objected to: *I*  
13 *was finally able to delete the article.*

14 THE COURT: Hat are you keeping in?

15 MR. HABIB: *Ha ha. Maybe now FBI won't kick my door*  
16 *down.*

17 THE COURT: Okay.

18 So then I will take out on page 1: *That's not a lie;*  
19 on page 2: *None of us are there.*

20 MR. HABIB: None of us are there, yes.

21 THE COURT: On page 3: *Exactly my friend... that*  
22 *entire long, and: I finally was able to delete that article.*

23 MR. HABIB: Yes.

24 MR. QUIGLEY: Your Honor, can we get an instruction  
25 that statements aren't coming in for the truth?

H1N5gam4

Osman - direct

1 THE COURT: Yes.

2 MR. QUIGLEY: Thank you.

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H1N5gam4

Osman - direct

1 (In open court)

2 BY MS. SHROFF:

3 Q. Mr. Osman, did you have an opportunity to read that  
4 document?

5 A. Yes.

6 Q. And does that refresh your recollection a little bit as to  
7 whether this was around the time when Samy started discussing  
8 ISIS with you? If you would take a look at the date?

9 A. Yes.

10 Q. And is that about the time or somewhere close in time when  
11 there was a lot of news reporting that Mosul had fallen to the  
12 Islamic State of Iraq and Syria?

13 A. Yes.

14 Q. And do you recall during that time where you were?

15 A. I was in Dallas, Texas.

16 Q. And what were you doing in Texas?

17 A. I was studying Arabic.

18 Q. And where was Mr. El- Goarany?

19 A. He was in New York City.

20 Q. And did he reach out to you about this?

21 A. Yes.

22 Q. And, at that time did he also continue to express that he  
23 did not agree with the violent side of ISIS?

24 A. Yes.

25 Q. And, did you have a conversation with him about that?

H1N5gam4

Osman - direct

1 A. Yeah.

2 Q. And was that -- I take it that conversation was over the  
3 phone, correct?

4 A. It was on the phone. Correct.

5 MS. SHROFF: I'm going to publish portions of that  
6 document.

7 Your Honor, may I approach?

8 THE COURT: Ladies and gentlemen, this document will  
9 be admitted into evidence as Defendant's Exhibit 113-SS and it  
10 is part of the evidence being admitted solely not for the truth  
11 of what is on this transcript but however, for whatever effect  
12 you believe it may have had on Mr. Samy El- Goarany. Okay?

13 BY MS. SHROFF:

14 Q. Do you see that, Mr. Osman?

15 A. I see it here, yes. Yes.

16 Q. And could you do me a favor and read where the author is  
17 noted as you?

18 A. The body of -- you want me to read the message?

19 Q. Yes, please.

20 Could you highlight it for him, Mr. Fisher?

21 So, there you go.

22 A. Thank you.

23 Yo, is it true that the Imam of Mosul Masjid got  
24 executed?

25 Q. And in reply Samy El- Goarany says: By who? Dawla?

H1N5gam4

Osman - direct

1 A. Dawla, yes.

2 Q. Who is that?

3 A. That's the Islamic State in Arabic.

4 Q. Could you read for me your response?

5 A. Okay. *Thought so.*

6 Q. And in response Samy El- Goarany says: *Bro, brace*  
7 *yourself; correct?*

8 A. Correct.

9 Q. And then he follows up by saying: *The propaganda is*  
10 *coming, correct?*

11 A. Correct.

12 Q. And what follows after that?

13 A. I said: *You know, it just started to hit me.*

14 Q. And then?

15 A. *I instantly jumped on the anti-ISIS wagon without any*  
16 *research.*

17 Q. Okay.

18 And what is the response back?

19 A. *Right now I'm just taking a step back.*

20 Q. And that's still you talking, correct?

21 A. Correct.

22 Q. Okay.

23 And you continue speaking.

24 A. *And humbling myself.*

25 Q. Okay.

H1N5gam4

Osman - direct

1 A. Cuz IDK ISH.

2 Q. What is I-S-H?

3 A. It means like thinks, or I don't know anything.

4 Q. Okay.

5 And what does he say -- by he I mean Samy  
6 El- Goarany -- he responds back: *That's the best stance to*  
7 *have; correct?*

8 A. Correct.

9 Q. And then what does Samy El- Goarany continue and say: *And*  
10 *we do not have the intellectual or experiential capacity to*  
11 *form a solid stance; correct?*

12 A. Correct.

13 Q. And he is talking about a solid stance on ISIS, correct?

14 A. Correct.

15 Q. And then what is the next response that he continues and  
16 gives?

17 A. He says: *A lot of people (Muslims including) are very*  
18 *quick to judge and mock. Okay, that's their prerogative but*  
19 *what do they really know that gives them the authority to act*  
20 *like that?*

21 Q. And do you have a response to that? That is Samy's  
22 response, right?

23 A. Yes, that's Samy's response.

24 Q. And he says: *It's something to think about; correct?*

25 A. Correct.

H1N5gam4

Osman - direct

1 Q. And it's fair to say around that time you had several  
2 theoretical discussions with -- you can take that down, thank  
3 you -- with Samy El- Goarany about ISIS, correct?

4 A. Correct.

5 Q. And he always, throughout the time, condemned their  
6 violence, correct?

7 A. Absolutely.

8 Q. And it is fair to say he continued to have theoretical  
9 discussions about this and many other topics with you, correct?

10 A. Correct.

11 Q. Now, let me forward your attention if I may, to May of  
12 2015. Is it possible that that's the next time Mr. El- Goarany  
13 contacted you and not February?

14 A. Perhaps.

15 Q. And do you, by any chance, recall your interaction with  
16 him?

17 A. At this moment I do not recall.

18 Q. Let me see if I can hand up a document that might refresh  
19 your recollection.

20 (Continued on next page)

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H1N3GAM5

Osman - direct

1 (Pause)

2 Q. Mr. Osman, does that refresh your recollection that maybe  
3 you heard or you had contact with Samy El-Goarany in about  
4 April of 2015?

5 A. Yes.

6 Q. Is it fair to say that at that time -- why don't you tell  
7 the jury where did you think Mr. El-Goarany was at that time?

8 A. At that time, I thought he was in Turkey.

9 Q. Did there come a time later in July of 2015 that you heard  
10 once again from Mr. El-Goarany?

11 A. Correct.

12 Q. How did that happen, how did that contact occur?

13 A. At first he messaged me on WhatsApp asking me if I was  
14 free, and then he gave me a phone call via WhatsApp.

15 Q. Before you received that phone call, had you an opinion as  
16 to where Samy had been before that time?

17 A. I believed he was in Turkey.

18 Q. Right. Did you tell other people, including your friends  
19 Nico and Ali, that that's where Samy was?

20 A. Yes.

21 Q. You told them that because you thought it was true,  
22 correct?

23 A. Correct.

24 Q. Did something happen in July of 2015 that changed your mind  
25 about where Samy was?

H1N3GAM5

Osman - direct

1 A. Yes.

2 Q. What was that?

3 A. He called me on the WhatsApp and informed me that he was in  
4 Syria.

5 Q. When he informed you he was in Syria, did he then follow up  
6 and tell you what exactly he was doing in Syria?

7 A. Yes.

8 Q. Could you tell the jury what it is that Mr. Samy El-Goarany  
9 told you?

10 A. He told me that he's now part of ISIS.

11 Q. Go ahead.

12 A. By using the term "groundhogs."

13 Q. If you can remember, I know it's been a while, if you can  
14 remember, can you tell the jury what it is that Mr. El-Goarany  
15 told you?

16 A. What, like, what did he say to me in that phone call?

17 Q. Yes.

18 A. So, at first, he told me that, you know, he's done lying to  
19 me, because I heard a Syrian accent in the background. He was  
20 in an Internet cafe. So I asked him where is he, he told me  
21 that he's done lying to me, he's in Syria.

22 Then he -- when I asked him what is he doing in Syria,  
23 he told me that he's with the groundhogs. And after that, I  
24 told him -- basically, I asked him, you know, what does he mean  
25 that he's with the groundhogs. He told me that he's -- he's

H1N3GAM5

Osman - direct

1 been training there. He has weapons, that he literally made it  
2 the movie Taken reference saying he has a special set of  
3 skills, ones that can make it a nightmare. It was a very sick  
4 joke.

5 And he then told me that whatever I know about --  
6 whatever I've been told about ISIS, I shouldn't believe it.  
7 And how I should have an open mind, since he's there. And he  
8 told me to -- to not tell anybody, if I was a Muslim. He  
9 attacked any scholars that condemned ISIS, which were most --  
10 which were all of my teachers and scholars that I studied  
11 under, and referred to them as apostates or kuffar. And I was  
12 very upset with his remarks.

13 Q. Did there come a time when the call between you and him got  
14 cut off?

15 A. Correct, yes.

16 Q. Did then Mr. El-Goarany, Samy El-Goarany reach out back to  
17 you again?

18 A. Yes.

19 Q. When he reached back out to you, did you then hear  
20 Mr. El-Goarany also talking to somebody where he was, wherever  
21 that was?

22 A. During the first call, yes.

23 Q. What is it that you heard in the background being said?

24 A. The first thing I heard was in Arabic a person said that  
25 he's going to the place of women, which was very odd. And then

H1N3GAM5

Osman - direct

1 he -- then Samy said okay, make sure you bring me one of them.

2 He said.

3 Q. What did you understand him to mean when he said "make sure  
4 you bring me one"?

5 A. I think he was referring to getting himself a wife.

6 Q. Getting himself what?

7 A. A wife.

8 Q. Is it fair to say, Mr. Osman, that you had a fairly lengthy  
9 conversation with Mr. El-Goarany at this point?

10 A. Yes.

11 Q. It is fair to say, is it not, that you were shocked by the  
12 information you were receiving from him, correct?

13 A. I was very shocked.

14 Q. You had a long conversation with him about it, correct?

15 A. Hmm-hmm.

16 Q. And eventually, the conversation came to an end how?

17 A. The first one or -- the first part or the second?

18 Q. The first part you said was disconnected, correct?

19 A. Yes.

20 Q. How did the second part come to an end?

21 A. The second one came to an end after we were arguing over  
22 the fact that he was saying that if you condemn ISIS, you are  
23 an apostate and leave the folds of the Islam. I told him that  
24 the person who taught you Islam, which is now I'm referring to  
25 myself, is a kafir, and I hang up the phone angrily.

H1N3GAM5

Osman - direct

1 Q. After you hung up the phone, did you reach out to  
2 Mr. El-Goarany again?

3 A. Yes.

4 Q. What did you say in that reach out?

5 A. I messaged him on Facebook Chat. Sorry. WhatsApp. And I  
6 told him, I said, hey, I just want to let you know that I don't  
7 think we should be talking anymore. I told him that I wouldn't  
8 tell anybody about what has happened. And then I also  
9 condemned everything he said, because he said that we saw eye  
10 to eye. I said no, we do not see eye to eye. He said that it  
11 was his duty to fight in ISIS, and I told him actually, it  
12 isn't, according to textual evidence in our Islamic tradition.  
13 And I told him I still love him as a brother. However, I  
14 strongly disagree with his actions, and I pray that he gets a  
15 second chance and survives his mistake. And I told him that he  
16 betrayed his country and that he, you know, we shouldn't be  
17 talking anymore. Basically.

18 Q. When you told Samy El-Goarany you wouldn't tell anyone, is  
19 that because Samy had asked you not to tell anyone during that  
20 conversation?

21 A. Yes.

22 Q. Did Samy tell you why he didn't want anyone else to know?

23 A. Yes.

24 Q. Why was that?

25 A. Because he didn't want his family to be in any form of

H1N3GAM5

Osman - direct

1 trouble.

2 Q. Now, you did in fact tell other people, correct?

3 A. Correct.

4 Q. Mr. Osman, who did you tell?

5 A. First person I told was a friend of mine in Philadelphia.

6 Q. Who else did you tell?

7 A. Then I told Tarek, and I told my imam, my local scholar,  
8 and my parents.

9 Q. Let me just direct you to Tarek's reaction to you telling  
10 him that.

11 A. Yes.

12 Q. Did Tarek respond to you appropriately in your opinion?

13 MR. QUIGLEY: Objection. Relevance.

14 THE COURT: Overruled.

15 A. He told me to not tell anybody.

16 Q. Did you think that was the right thing?

17 A. No.

18 Q. Why was that?

19 A. Because Samy has the capability of contacting all of his  
20 friends, which would have incriminated or implicated all of us.  
21 And whatever -- because he's in an illegal territory.

22 Q. Did there come a time, Mr. Osman, when you were contacted  
23 by the Federal Bureau of Investigation?

24 A. Yes.

25 Q. When was the first time that you had -- let me rephrase

H1N3GAM5

Osman - direct

1 that.

2           When was the first time that the FBI reached out to  
3 you?

4 A. I believe it was late July.

5 Q. Do you recall where you were when they first -- late July  
6 of what year, first of all?

7 A. 2015.

8 Q. Where were you in late July of 2015?

9           MR. QUIGLEY: Objection, relevance.

10          THE COURT: Overruled.

11 A. I was in -- I was at my brother's dentist appointment at a  
12 dental office while they were at my house with my parents.

13 Q. Did you then receive phone calls from the FBI?

14 A. Many phone calls.

15 Q. What is many?

16           MR. QUIGLEY: Objection, relevance.

17          THE COURT: Overruled.

18 A. I would say more than 10.

19 Q. Did you respond to the phone calls?

20 A. I did not until -- because I didn't see them and then I  
21 called them back I believe.

22 Q. When you saw the phone calls, did you receive a voice  
23 message or something that prompted you to respond?

24 A. Yes.

25 Q. What did you receive?

H1N3GAM5

Osman - direct

1 A. I received a voice mail from an FBI agent.

2 Q. Did you respond to it?

3 A. Yes.

4 Q. What happened after you responded to it?

5 A. They asked if we could meet and have an interview.

6 Q. What did you say to them?

7 A. I said I would -- I wouldn't mind having the interview, as  
8 long as I spoke with my lawyer.

9 Q. Did they agree to wait and interview you after you got a  
10 lawyer?

11 A. No.

12 MR. QUIGLEY: Objection.

13 THE COURT: Sustained.

14 Q. Did you meet with the FBI?

15 A. Yes.

16 Q. Where did you meet with them?

17 A. At a local supermarket called Price Chopper.

18 Q. Price Chopper?

19 A. Yes.

20 Q. Who was present for that meeting?

21 A. Myself, my brother, and two agents or -- no, sorry. Three  
22 agents.

23 Q. How old is your brother, by the way?

24 A. My brother at the time I believe was 18.

25 Q. I take it that your brother was not seated at the same

H1N3GAM5

Osman - direct

1 table as you and the FBI?

2 A. He was not.

3 Q. Okay. Between the time you returned their call and the  
4 time that you had the meeting, were you provided with an  
5 opportunity to contact a lawyer?

6 MR. QUIGLEY: Objection, relevance.

7 THE COURT: Overruled.

8 A. No.

9 Q. You had a meeting with the FBI, correct?

10 A. Correct.

11 Q. You answered the FBI's questions to the best of your  
12 ability, correct?

13 A. Yes, I did.

14 Q. You tried to be truthful, correct?

15 A. Correct.

16 Q. You tried to be complete, correct?

17 A. Correct.

18 Q. They asked you your consent to look at your phone, correct?

19 A. Correct.

20 Q. You gave them the consent, correct?

21 A. Yes.

22 Q. You gave them your full name and your address, which they  
23 already had, but you reconfirmed it for them, correct?

24 MR. QUIGLEY: Objection to the leading.

25 A. I believe so.

H1N3GAM5

Osman - direct

1                   THE COURT: Sustained.

2 Q. What else did the FBI ask you, sir?

3 A. At the first meeting?

4 Q. Sure. You know what? I don't want to -- your Honor --  
5 never mind.

6                   How long was your meeting with the FBI?

7 A. It was very, very long.

8 Q. Estimate for us.

9 A. I believe it was more than two hours.

10 Q. You didn't take notes, correct?

11 A. I did not take notes.

12 Q. Did they take notes?

13 A. I don't recall.

14 Q. Is it fair to say they never gave you their notes to  
15 review, correct?

16 A. They never did.

17 Q. After that meeting with the FBI, did you then in fact get a  
18 lawyer?

19 A. Absolutely.

20 Q. After you got a lawyer, did you then again meet with the  
21 FBI?

22 A. Yes.

23 Q. At that second meeting, who was present?

24                   MR. QUIGLEY: Objection. Asked and answered.

25                   THE COURT: Sustained.

H1N3GAM5

Osman - direct

1 Q. Let me just focus you on the second meeting. Okay. Let me  
2 start with the first meeting.

3 Did you ever tell anybody at the prosecutorial table  
4 that Samy El-Goarany told you that he went to Raqqah, Syria?

5 A. No, I did not talk about it.

6 Q. You never told them that at the first meeting, correct?

7 A. Correct.

8 Q. And you never told them at the second meeting, correct?

9 A. Correct.

10 MR. QUIGLEY: Objection to the leading.

11 THE COURT: Ms. Shroff, do not lead.

12 Q. What did you tell them?

13 A. I told them that I believed that he was in Turkey for  
14 humanitarian causes. And when he did call me on the WhatsApp  
15 phone call, he told me that he was in a city -- in the city  
16 where every gun was pointed at, which was the only implication  
17 of Raqqah, but I've never said it.

18 Q. When was that?

19 A. That was in July.

20 Q. July of what year?

21 A. Or late June. No, no. Sorry. July.

22 Q. Of what year?

23 A. Of 2015.

24 Q. Before that, you had absolutely no indication, correct,  
25 that he was in Raqqah, Syria?

H1N3GAM5

Osman - direct

1 A. I had no indication.

2 MR. QUIGLEY: Objection to the leading.

3 Q. Mr. Osman, have you met with me before?

4 A. Yes.

5 Q. Me and who else at the defense table have you met with, do  
6 you recall?

7 A. I recall meeting with Sarah and an investigator.

8 Q. Do you recall when that was?

9 A. It was -- I don't recall, but it was -- yeah, I don't  
10 recall.

11 Q. Was your lawyer present?

12 A. Yes.

13 Q. Did you meet with me again after that?

14 A. No. Well, on the phone, yes.

15 Q. But you met with me today, right?

16 A. Yes.

17 Q. I include today.

18 A. Yes.

19 Q. You met with me today, correct?

20 A. Yes.

21 Q. When we met today, was your lawyer present?

22 A. Correct.

23 Q. Mr. Osman, it's fair to say, right, that at all times you  
24 did your very best to tell all of us the truth?

25 MR. QUIGLEY: Objection, leading.

H1N3GAM5

Osman - cross

1                   THE COURT: Don't lead, Ms. Shroff.

2                   MS. SHROFF: I have nothing further, your Honor.

3 Thank you.

4                   THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. QUIGLEY:

7 Q. Good afternoon, Mr. Osman.

8 A. Good afternoon.

9 Q. Just to be clear, between the phone interviews and the  
10 in-person interviews, you've met or talked to the defense three  
11 times and the government twice.

12 MS. SHROFF: Objection, misstates facts in evidence.

13 THE COURT: Overruled.

14 Q. Let's break that down. You said you met with Sarah, I  
15 think, you said from the defense, right?

16 A. Yes.

17 Q. You had additional phone call with Ms. Shroff, correct, or  
18 an additional phone call with the defense?

19 A. With the defense, correct.

20 Q. And then you met with them again today, correct?

21 A. Correct.

22 Q. That's three.

23 A. Yes.

24 Q. You met with the government, the FBI, once in July 2015,  
25 right?

H1N3GAM5

Osman - cross

1 A. Yes.

2 Q. And the FBI and the government again in May 2016, right?

3 A. Yes.

4 Q. So three to two.

5 A. Hmm-hmm.

6 Q. Okay. So, you don't know the defendant in this case,  
7 Mr. El-Goarany, right?

8 A. I do not.

9 Q. Never met him?

10 A. Never met him.

11 Q. Never spoken to him?

12 A. Never spoken to him.

13 Q. You don't know what went on between him and Samy  
14 El-Goarany?

15 A. I do not.

16 Q. So let's talk about Samy El-Goarany for a second. He left  
17 the U.S. to join ISIS, right?

18 A. Yes.

19 Q. And it's your testimony he didn't tell you he was actually  
20 leaving the U.S. in late January 2015, right?

21 A. Can you repeat the question?

22 Q. You testified about a conversation that you had with him  
23 in --

24 A. Yes.

25 Q. -- October of 2014, right?

H1N3GAM5

Osman - cross

1 A. Hmm-hmm.

2 Q. Then you talked to him again, and he said I'm not going  
3 overseas, right?

4 A. Yeah, he told me he wasn't going to go.

5 Q. You were not aware that he left the U.S. at the end of  
6 January 2015?

7 A. I was not aware.

8 Q. He didn't give you the flight number of the plane he was  
9 flying out on?

10 A. He did not.

11 Q. He didn't say anything to you about when he would arrive in  
12 Istanbul?

13 A. He did not.

14 Q. You didn't actually know when he left?

15 A. I did not know.

16 Q. He didn't contact you to tell you he had arrived in Turkey?

17 A. He did not contact me until later.

18 Q. In May sometime?

19 A. Yes.

20 Q. You didn't put him in touch with anybody in Turkey before  
21 he left, right?

22 A. Never.

23 Q. He never asked you to reach out to anyone in Turkey for  
24 him?

25 A. Correct.

H1N3GAM5

Osman - cross

1 Q. Or Syria?

2 A. Correct.

3 Q. He never asked you to translate anything for him while he  
4 was in Turkey, right?

5 A. He did not.

6 Q. You never directed him to any particular location in Turkey  
7 or Syria, correct?

8 A. Nope.

9 Q. And during the time after he left the United States, you  
10 never told him about the cost of travel to cities near the  
11 Turkey and Syria border, correct?

12 A. I did not.

13 Q. He didn't tell you in May 2015 that everything was going  
14 according to plan, right?

15 A. I don't believe so, no.

16 Q. You never asked him about parking a car in his parking lot?

17 A. No.

18 Q. You had hundreds, maybe thousands of Facebook  
19 communications with him, right?

20 A. Yes.

21 MS. SHROFF: What time period, your Honor?

22 Q. For all time. You had hundreds, if not thousands, of  
23 Facebook communications?

24 A. Yes.

25 MS. SHROFF: Objection.

H1N3GAM5

Osman - cross

1                   THE COURT: Overruled.

2 Q. Up to some time in 2015, right?

3 A. Yes.

4 Q. In fact, the relationship with him was primarily an online  
5 relationship, right?

6 A. Correct.

7 Q. You didn't go back and delete your Facebook messages with  
8 him, correct?

9 A. I did not.

10 Q. As far as you know, he didn't delete all his Facebook  
11 messages or any of his Facebook messages with you, correct?

12 A. Not to my understanding, correct.

13 Q. You've never told anyone that you had been with the FSA,  
14 you were now with Jabhat al Nusra and now you are with the  
15 Islamic State?

16 A. Yeah, never.

17 Q. You never told anyone, in talking about the situation in  
18 Iraq, that jihad was a duty. You never said that, right?

19 A. I never said that?

20 Q. Right.

21 A. Yeah, I've never said that.

22 Q. Right. And you said that Mr. El-Goarany called you and he  
23 was very excited in June 2014 when Mosul fell to the Islamic  
24 State. He was happy about that, correct?

25 A. Correct.

H1N3GAM5

Osman - cross

1 Q. You didn't go out and go online and say Allah is great,  
2 Mosul falls to the Islamic State?

3 A. Never.

4 Q. Just checking.

5 You never posted anything online when ISIS took over  
6 some Syrian army units and said that was a great piece of news,  
7 and hopefully the expansion of the Islamic State will reach  
8 Cairo someday?

9 A. I never said that.

10 Q. Not something you would say?

11 A. No.

12 Q. Backing up one second. You met with the FBI twice. You  
13 know a lot of Samy El-Goarany's friends, right?

14 A. Yes.

15 Q. Fair to say the FBI talked to many, if not all, of them?

16 MS. SHROFF: Objection. How would he know.

17 THE COURT: If he knows.

18 A. I have some sort of a clue.

19 Q. Right.

20 A. Yes.

21 Q. You heard from people like Nico and that the FBI had talked  
22 to most of Samy's friends, right?

23 A. Yes.

24 Q. So, I want to talk about some of Samy's views before he  
25 left the United States just briefly.

H1N3GAM5

Osman - cross

1            You knew he was interested in ISIS before he left the  
2 United States, right?

3 A. I knew he was not directly --

4 Q. You knew he was interested in ISIS, right?

5 A. Yes, academically.

6 Q. Well, he was excited when Mosul fell to ISIS, right?

7 A. Yes.

8 Q. You said he called you and he was very excited about that?

9 A. Yes.

10 Q. Because it was a significant victory for ISIS, right?

11 MS. SHROFF: Objection.

12 THE COURT: Overruled.

13 A. More like it was a big news story.

14 Q. Do you recall he told you that he was tired of the Muslim  
15 Brotherhood protesting and getting shot?

16 A. He said that in the WhatsApp call.

17 Q. When he was in Iraq or Syria, right?

18 MS. SHROFF: Objection.

19 Q. He told you at one point that ISIS guys were a little  
20 crazy, but at least they were doing something, right?

21 A. Yes.

22 Q. That was before he left?

23 A. Yes.

24 Q. He would send you, before he left, links to ISIS videos and  
25 talks about ISIS, right?

H1N3GAM5

Osman - cross

1 A. Hmm-hmm.

2 Q. He had asked you to -- you've got to answer yes or no.

3 A. Yes.

4 Q. He had asked you to translate those for him, right?

5 A. Yes.

6 Q. He discussed -- you knew him pretty well, right? You knew  
7 Samy El-Goarany pretty well?

8 A. Yes.

9 Q. He never really been outside the United States on his own,  
10 correct?

11 MS. SHROFF: Objection.

12 A. I'm not aware.

13 Q. You don't know?

14 A. Yeah.

15 Q. Okay. You knew he didn't speak Arabic?

16 A. Yeah, he did not speak Arabic fluently.

17 Q. Sorry?

18 A. Fluently he did not speak Arabic.

19 Q. Really at all?

20 A. Barely, yes.

21 Q. He knew a few words?

22 A. Very few.

23 Q. In fact, sometimes you might make a little fun of his  
24 messed up Arabic?

25 A. Yes.

H1N3GAM5

Osman - cross

1 Q. In fact, when he told you in October of 2014 that he was  
2 going overseas, you wondered how he would make it in Turkey or  
3 Syria without speaking Arabic, correct?

4 A. Correct.

5 MS. SHROFF: Objection to the compound questions, your  
6 Honor.

7 THE COURT: Break it down, Mr. Quigley.

8 Q. So, I want to talk move ahead to those WhatsApp calls you  
9 had in July 2015.

10 A. Okay.

11 Q. He called you, he called you from, as you said, the city  
12 that had every gun pointed at it, correct?

13 A. Correct.

14 Q. You understood that to mean he was in Raqqah, Syria?

15 MS. SHROFF: Objection. That is not the testimony on  
16 direct.

17 THE COURT: The jury will recall what the testimony  
18 was.

19 A. He said in the WhatsApp call, yes.

20 Q. So you understood him to be saying he was in Raqqah?

21 A. I understood it. Correct.

22 Q. Do you recall he told you he had help getting to ISIS?

23 MS. SHROFF: Objection.

24 THE COURT: Overruled.

25 A. Yes.

H1N3GAM5

Osman - redirect

1 Q. Do you recall that he said he did have help getting to  
2 ISIS, right?

3 A. Yes.

4 Q. Do you recall he said it will be impossible to get to ISIS  
5 without help, right?

6 A. He did say that.

7 Q. Do you recall he said that this company will continue to  
8 expand?

9 A. He did use that term, correct.

10 Q. You understood the term "company" to be a reference to  
11 ISIS, correct?

12 A. Correct.

13 Q. Do you recall that Samy, even after he joined ISIS, used  
14 the term "Daesh" to refer to ISIS?

15 A. Yes.

16 MR. QUIGLEY: One moment, your Honor.

17 THE COURT: Yes.

18 MR. QUIGLEY: I have nothing further.

19 MS. SHROFF: May I, your Honor?

20 THE COURT: You may.

21 REDIRECT EXAMINATION

22 BY MS. SHROFF:

23 Q. Mr. Osman?

24 A. Yes.

25 Q. First time Samy El-Goarany ever said anything that led you

H1N3GAM5

Osman - redirect

1 to think about Raqqah, Syria was in July of 2015, correct?

2 A. Correct.

3 Q. Let's just got slowly, okay, because Mr. Quigley was a  
4 little fast. Where is Istanbul?

5 A. Istanbul is in Turkey.

6 Q. Is that where Samy said he was going?

7 A. Yes.

8 Q. Would it be common if you had known somebody in Istanbul  
9 that you would say "I have a friend in Istanbul, let me  
10 introduce you to him"?

11 MR. QUIGLEY: Objection.

12 A. Yes.

13 THE COURT: Objection sustained.

14 MR. QUIGLEY: Move to strike the answer.

15 THE COURT: Granted.

16 Q. Samy was a close friend of yours, correct?

17 A. Correct.

18 Q. If you had a friend in a country where he was traveling,  
19 would you have hooked them up?

20 MR. QUIGLEY: Objection.

21 A. Yes.

22 MR. QUIGLEY: Speculation.

23 THE COURT: Overruled.

24 Q. You would have hooked them up, right?

25 A. Yeah.

H1N3GAM5

Osman - redirect

1 Q. Thank you. Let me focus also on the time that Samy said  
2 that he thought the Muslim Brotherhood was too peaceful. That  
3 was in July of 2015, correct?

4 A. I believe so, yes.

5 Q. After he was in ISIS, correct?

6 A. Yes.

7 Q. Now, before he was in ISIS, he told you he thought they  
8 were a little crazy, correct?

9 A. ISIS?

10 Q. Right.

11 A. Correct.

12 Q. Right. Now, is it fair to say, Mr. Osman, that you were a  
13 good friend to Samy El-Goarany?

14 A. Very good friend.

15 Q. And he lied to you, did he not?

16 A. He did lie to me.

17 Q. And he lied to you so well that you believed him, did you  
18 not?

19 A. Yes.

20 Q. And wasn't Nico a good friend to Samy El-Goarany?

21 A. Yes.

22 Q. And he lied to him as well, did he not?

23 A. Yes.

24 Q. And both you and Nico believed that he was going there to  
25 do humanitarian work, correct?

H1N3GAM5

Osman - redirect

1 MR. QUIGLEY: Objection to what Nico believed.

2 THE COURT: Sustained.

3 Q. You, one of Samy El-Goarany's closest friends, believed  
4 Samy El-Goarany when he said to you he was going to go do  
5 humanitarian work, correct?

6 A. Yes.

7 Q. He lied, correct?

8 A. Yes.

9 Q. Successfully, correct?

10 A. Correct.

11 Q. And he left you at risk, correct?

12 A. Correct.

13 Q. And he left Nico at risk, correct?

14 A. Correct.

15 Q. And he left Ali at risk, correct?

16 MR. QUIGLEY: Objection.

17 A. Yes.

18 Q. And the only person he did not leave at risk was his  
19 family, correct?

20 MR. QUIGLEY: Objection.

21 A. Correct.

22 THE COURT: Sustained.

23 MR. QUIGLEY: Move to strike.

24 Q. Actually let me rephrase. Did Samy El-Goarany tell you who  
25 he wanted to protect?

H1N3GAM5

Osman - recross

1 A. His family.

2 MS. SHROFF: Thank you. I have nothing further.

3 MR. QUIGLEY: Brief recross, your Honor.

4 RECROSS EXAMINATION

5 BY MR. QUIGLEY:

6 Q. Sir, focusing on that conversation in, I guess it was  
7 October of 2014, where Samy El-Goarany spoke to you about his  
8 desire to go overseas.

9 A. Yeah.

10 Q. It's your testimony that he told you he would be joining  
11 some illegal humanitarian organization, correct?

12 A. He did say that.

13 Q. Right. Illegal, right?

14 A. Illegal.

15 Q. There's nothing wrong with helping refugees, right?

16 MS. SHROFF: Objection. Calls for speculation for  
17 him.

18 THE COURT: Overruled.

19 A. Correct.

20 Q. It is a very laudable thing, right?

21 A. Yes.

22 Q. And yet, after he told you that he was joining this illegal  
23 humanitarian organization, you went up to your room and cried,  
24 right?

25 A. Yes.

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Osman - redirect

1 Q. You were so concerned for weeks -- you were concerned for  
2 weeks after that, that Samy El-Goarany might be an FBI  
3 informant, correct?

4 MS. SHROFF: Your Honor, objection. Outside the  
5 scope.

6 THE COURT: Sustained.

7 MR. QUIGLEY: I have nothing further, your Honor.

8 MS. SHROFF: I have one. Maybe even two.

9 REDIRECT EXAMINATION

10 BY MS. SHROFF:

11 Q. Mr. Osman.

12 A. Yes.

13 Q. Smuggling people out of Syria and crossing them into Turkey  
14 would be illegal, correct?

15 MR. QUIGLEY: Objection.

16 MS. SHROFF: He opened the door.

17 THE COURT: If he knows.

18 Q. You know, right?

19 A. Yes.

20 MR. QUIGLEY: Objection.

21 Q. It would be illegal, correct?

22 A. Yes.

23 Q. It would be non-violent, correct?

24 A. Correct.

25 Q. And it certainly would be humanitarian, would it not?

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1 A. Yes.

2 MS. SHROFF: I have nothing further.

3 MR. QUIGLEY: Very briefly, your Honor.

4 RECROSS EXAMINATION

5 BY MR. QUIGLEY:

6 Q. Sir, you're not an expert in Syrian law, correct?

7 A. I am not an expert in Syrian law.

8 Q. You're not an expert in Turkish law?

9 A. No.

10 Q. You're not an American lawyer, correct?

11 A. I'm not an American lawyer.

12 MR. QUIGLEY: No further questions.

13 REDIRECT EXAMINATION

14 BY MS. SHROFF:

15 Q. Mr. Osman, have you traveled?

16 A. Yes I have.

17 Q. Is it illegal to smuggle people out of one country and into  
18 another?

19 A. I believe so.

20 MS. SHROFF: Thank you.

21 THE COURT: Nothing further.

22 Mr. Osman, you may step down.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 THE COURT: Let me talk to the lawyers.

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1 (At the sidebar)

2 THE COURT: I take it there is no additional witnesses  
3 today?

4 MS. MIRON: Correct.

5 THE COURT: So I should send the jury home?

6 MS. SHROFF: Frankly, I'd like to go home.

7 THE COURT: Well --

8 MR. QUIGLEY: That's fine with us.

9 THE COURT: Let's send them home. Let me ask about  
10 tomorrow. I take it Mr. March will testify in the morning?

11 MS. SHROFF: Yes.

12 THE COURT: After that? Any idea?

13 MS. SHROFF: I think we may have one more witness, but  
14 we're just not sure. We're trying to get the witness together.  
15 It's not a fact witness. How about that.

16 MR. QUIGLEY: Okay. Is it an expert witness?

17 MS. SHROFF: No. We might put up a summary witness.

18 MR. QUIGLEY: Judge, the only thing we'd ask is, given  
19 the uncertainty about the length of tomorrow, there is a  
20 chance -- I'm not saying a high chance -- depending what the  
21 expert says, the government may put on a very brief rebuttal  
22 case. Given the uncertainty about how many witnesses the  
23 defense will call, that we close on Wednesday.

24 THE COURT: Let me ask this. Have you made a decision  
25 as to whether or not Mr. El Gammal will be testifying?

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1 MS. SHROFF: We have told the government, your Honor,  
2 I told them over the weekend so that they would not work on  
3 this unnecessarily, it is my understanding that he's not going  
4 to testify. I did tell them Saturday. I reiterated on Sunday  
5 and I believe I reiterated it to Mr. Quigley this afternoon.

6 THE COURT: Just --

7 MS. SHROFF: I'm assuaging their concern. And that  
8 still holds true. You're welcome to conduct an inquiry if you  
9 want.

10 THE COURT: That's up to the parties if you want me to  
11 do that. So then I'll send them home and we'll talk about  
12 whether we stick around.

13 (In open court)

14 THE COURT: Ladies and gentlemen, that is going to do  
15 it for today. We will meet again tomorrow morning. Please be  
16 in the jury room no later than 9:20.

17 Assuming that the reports are correct, the storm will  
18 have passed by then and there shouldn't be any problems with  
19 mass transportation. Obviously we'll be monitoring that  
20 situation closely. Do plan on being here at 9:20.

21 We're still very much on track to finish this week.  
22 We may be done with all of the evidence tomorrow. There is a  
23 chance we will not be. I'm told we are still on track to  
24 finish this week over all. So hopefully, that is some hope to  
25 you. We'll see you tomorrow morning.

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1           Please do not discuss the case, please get home  
2 safely.

3           (Jury excused)

4           THE COURT: Let me ask this. I generally don't put  
5 limits on arguments, summations included. But I do expect that  
6 the parties behave reasonably in that regard. Do we have an  
7 idea as to how long these summations will be?

8           MR. QUIGLEY: Your Honor, we're still working on ours.  
9 So could we let you know in the morning?

10          MS. TEKEEI: Part of it depends on the defense case  
11 that they are continuing to put on. So if we can give an  
12 approximate amount, but I can't be completely wedded to that  
13 and I don't want to mislead the Court.

14          THE COURT: I understand. Is there some outside range  
15 that we're working with as we sit here?

16          MS. TEKEEI: I would say approximately two hours for  
17 our summation.

18          MR. HABIB: Less than an hour, your Honor.

19          THE COURT: Okay.

20          MS. SHROFF: Is it two hours for the main and the  
21 rebuttal or just the main?

22          THE COURT: I assume the main. Mr. Quigley will be  
23 giving the rebuttal?

24          MR. QUIGLEY: That is the current plan, your Honor.

25          THE COURT: Okay. With respect to the charge

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1 conference, we can do it tomorrow I suppose. I see a lot of  
2 heads.

3 MS. SHROFF: Please.

4 THE COURT: Let's do it tomorrow. My fear, although I  
5 want to be fair to all sides, is that it's going to be a very  
6 short day tomorrow. Maybe one witness, maybe two. Certainly  
7 one witness, maybe two. So maybe a half day. Will we even get  
8 to lunch tomorrow if we have just those two witnesses?

9 MS. SHROFF: Honestly, I told this to the government,  
10 we think Dr. March will be short. Certainly not as long as  
11 Mr. Zelin was. Short.

12 THE COURT: Okay. I guess I'm asking these questions  
13 because of the government's request that summations take place  
14 on Wednesday. Any objection?

15 MS. SHROFF: No, your Honor.

16 THE COURT: So we'll certainly have the charge  
17 conference tomorrow. Anything further?

18 MR. QUIGLEY: Not from us, thank you, your Honor.

19 MS. MIRON: Just a minute, your Honor.

20 MR. HABIB: That's fine, thank you, your Honor.

21 MS. SHROFF: We were trying to figure out Professor  
22 March, but this is fine. Thank you, your Honor.

23 THE COURT: Have a good night, folks.

24 (Adjourned until January 24, 2017, at 9:15 a.m.)

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5	300-BB . . . . .	1404
6	300-CC . . . . .	1407
7	300-DD . . . . .	1408
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